

No. 1982-201

AN ACT

SB 448

Amending Title 13 (Commercial Code) of the Pennsylvania Consolidated Statutes, conforming the text of the title to the current official text of the Uniform Commercial Code relating to secured transactions and further regulating priority of purchase money security interests.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1105, 1201, 2107, 2702, 3501, 4208, 5116, 7209, 9102, 9103, 9104, 9105, 9106, 9203, 9204, 9205, 9301, 9302, 9304, 9305, 9306, 9307, 9308, 9312, 9313, 9318, 9401, 9402, 9403, 9404, 9405, 9406, 9408, 9409, 9501, 9502, 9504 and 9505 of Title 13, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, are amended and section 9114 is added to read:

§ 1105. Territorial application of title; power of parties to choose applicable law.

(a) General rule.—Except as otherwise provided in this section, when a transaction bears a reasonable relation to this Commonwealth and also to another state or nation the parties may agree that the law either of this Commonwealth or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this Commonwealth.

(b) Limitations on power of parties to choose applicable law.—Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Section 2402 (relating to rights of creditors of seller against sold goods).

Section 4102 (relating to applicability of division on bank deposits and collections).

Section 6102 (relating to bulk transfers subject to division on bulk transfers).

Section 8106 (relating to applicability of division on investment securities).

[Sections 9102 and 9103 (relating to policy and scope of division on secured transactions).]

Section 9103 (relating to perfection provisions of division on secured transactions.)

§ 1201. General definitions.

Subject to additional definitions contained in the subsequent provisions of this title which are applicable to specific provisions of this title,

the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Action.” In the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

“Aggrieved party.” A party entitled to resort to a remedy.

“Agreement.” The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 1205 and 2208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 1103 (relating to supplementary general principles of law applicable)). (Compare definition of “contract”.)

“Airbill.” A document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

“Bank.” Any person engaged in the business of banking.

“Bearer.” The person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

“Bill of lading.” A document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

“Branch.” Includes a separately incorporated foreign branch of a bank.

“Burden of establishing a fact.” The burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

“Buyer in ordinary course of business.” A person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. *All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind.*

“Buying.” Buying may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“Conspicuous.” A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

A printed heading in capitals (as: **NONNEGOTIABLE BILL OF LADING**) is conspicuous.

Language in the body of a form is conspicuous if it is in larger or other contrasting type or color. But in a telegram any stated term is conspicuous.

Whether a term or clause is conspicuous or not is for decision by the court.

“Contract.” The total legal obligation which results from the agreement of the parties as affected by this title and any other applicable rules of law. (Compare definition of “agreement”.)

“Creditor.” Includes:

- a general creditor;
- a secured creditor;
- a lien creditor; and

any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor’s or assignor’s estate.

“Defendant.” Includes a person in the position of defendant in a cross-action or counterclaim.

“Delivery.” With respect to instruments, documents of title, chattel paper or securities, means voluntary transfer of possession.

“Discover.” See definition of “notice.”

“Document of title.” Includes:

- a bill of lading;
- a dock warrant;
- a dock receipt;
- a warehouse receipt or order for the delivery of goods; and

any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the possession of the bailee which are either identified or are fungible portions of an identified mass.

“Fault.” Wrongful act, omission or breach.

“Fungible.” With respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purpose of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

“Genuine.” Free of forgery or counterfeiting.

“Good faith.” Honesty in fact in the conduct or transaction concerned.

“Holder.” A person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

“Honor.” To pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

“Insolvency proceedings.” Includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

“Insolvent.” A person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal bankruptcy law.

“Knows” or “knowledge.” See definition of “notice.”

“Learn.” See definition of “notice.”

“Money.” A medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

“Notice.” A person has “notice” of a fact when:

- (1) he has actual knowledge of it;
- (2) he has received a notice or notification of it; or
- (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person “knows” or has “knowledge” of a fact when he has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

A person “notifies” or “gives” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “receives” a notice or notification when:

- (1) it comes to his attention; or
- (2) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

“Organization.” Includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

“Party.” As distinct from “third party,” means a person who has engaged in a transaction or made an agreement within this title.

“Person.” Includes an individual or an organization. See section 1102 (relating to purposes; rules of construction; variation by agreement).

“Presumption” or “presumed.” Either means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

“Purchase.” Includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

“Purchaser.” A person who takes by purchase.

“Remedy.” Any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

“Representative.” Includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

“Rights.” Includes remedies.

“Security interest.”

A security interest means an interest in personal property or fixtures which secures payment or performance of an obligation.

The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2401) is limited in effect to a reservation of a “security interest.”

The term also includes any interest of a buyer of accounts *or* chattel paper[, *or contract rights*] which is subject to Division 9 (relating to secured transactions).

The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2401 (relating to passing of title; reservation for security) is not a “security interest,” but a buyer may also acquire a “security interest” by complying with Division 9.

Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment is in any event subject to the provisions on consignment sales (section 2326).

Whether a lease is intended as security is to be determined by the facts of each case; however:

(1) the inclusion of an option to purchase does not of itself make the lease one intended for security; and

(2) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

“Send.” In connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within

the time at which it would have arrived if properly sent has the effect of a proper sending.

“Signed.” Includes any symbol executed or adopted by a party with present intention to authenticate a writing.

“Surety.” Includes guarantor.

“Telegram.” Includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

“Term.” That portion of an agreement which relates to a particular matter.

“Unauthorized signature or indorsement.” A signature or indorsement made without actual, implied or apparent authority and includes a forgery.

“Value.” Except as otherwise provided with respect to negotiable instruments (section 3303) and bank collections (sections 4208 and 4209) a person gives “value” for rights if he acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(2) as security for or in total or partial satisfaction of a preexisting claim;

(3) by accepting delivery pursuant to a preexisting contract for purchase; or

(4) generally, in return for any consideration sufficient to support a simple contract.

“Warehouse receipt.” A receipt issued by a person engaged in the business of storing goods for hire.

“Written” or “writing.” Includes printing, typewriting or any other intentional reduction to tangible form.

§ 2107. Goods to be severed from realty: recording.

(a) **[Timber, minerals] Minerals** and structures.—A contract for the sale of **[timber,]** minerals or the like (*including oil and gas*) or a structure or its materials to be removed from realty is a contract for the sale of goods within this division if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(b) Other property severable without material harm.—A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (a) *or of timber to be cut* is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(c) Recording.—The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transfer-

ring an interest in land and shall then constitute notice to third parties of the rights of the buyer under the contract for sale.

§ 2702. Remedies of seller on discovery of insolvency of buyer.

(a) Right to refuse or stop delivery.—Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract and stop delivery under this division (section 2705).

(b) Reclamation of goods on credit.—Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(c) Limitations on right of reclamation.—The right of the seller to reclaim under subsection (b) is subject to the rights of a buyer in ordinary course or other good faith purchaser [or lien creditor] under this division (section 2403). Successful reclamation of goods excludes all other remedies with respect to them.

§ 3501. When presentment, notice of dishonor, and protest necessary or permissible.

(a) Presentment.—Unless excused (section 3511 (relating to waived or excused presentment, protest or notice of dishonor or delay therein)) presentment is necessary to charge secondary parties as follows:

(1) Presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date.

(2) Presentment for payment is necessary to charge any indorser.

(3) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 3502(a)(2) (relating to unexcused delay; discharge).

(b) Notice of dishonor.—Unless excused (section 3511):

(1) Notice of any dishonor is necessary to charge any indorser.

(2) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 3502(a)(2).

(c) Protest of dishonor.—Unless excused (section 3511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states, [and] territories, *dependencies and possessions* of the United States,

[and] the District of Columbia *and the Commonwealth of Puerto Rico*. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(d) Indorsement of instrument after maturity.—Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

§ 4208. Security interest of collecting bank in items, accompanying documents and proceeds.

(a) General rule.—A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) Partial withdrawal of credit given for several items.—When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Satisfaction and continuation of security interest.—Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Division 9 (relating to secured transactions) except that:

(1) no security agreement is necessary to make the security interest enforceable (section 9203(a)(2) (relating to *attachment and* enforceability of security interest; proceeds, formal requisites));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

§ 5116. Transfer and assignment.

(a) Right to draw under a credit.—The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(b) Right to proceeds.—Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of **[a contract right] an account**

under Division 9 (relating to secured transactions) and is governed by that division except that:

(1) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Division 9;

(2) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(3) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(c) Other rights unaffected.—Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

§ 7209. Lien of warehouseman.

(a) Charges and expenses covered by lien.—A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated the lien of a warehouseman is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(b) Reservation of security interest for other charges.—The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. Such a security interest is governed by Division 9 (relating to secured transactions).

(c) Other persons against whom lien or security interest effective.—

(1) The lien of a warehouseman for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to

whom the document confers no right in the goods covered by it under section 7503 (relating to document of title to goods defeated in certain cases).

(2) The lien of a warehouseman on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(d) Loss of lien.—A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 9102. Policy and [scope] *subject matter* of division.

(a) General rule.—Except as otherwise provided [in section 9103 on multiple state transactions and] in section 9104 on excluded transactions, this division applies [so far as concerns any personal property and fixtures within the jurisdiction of this Commonwealth]:

(1) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper[,] or accounts [or contract rights]; and also

(2) to any sale of accounts[, contract rights] or chattel paper.

(b) Contracts and statutory liens.—This division applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This division does not apply to statutory liens except as provided in section 9310 (relating to priority of certain liens arising by operation of law).

(c) Applicability to certain security interests unaffected.—The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

§ 9103. [Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.

(a) Accounts and contract rights.—If the office where the assignor of accounts or contract rights keeps his records concerning them is in this Commonwealth, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this division; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(b) General intangibles and mobile equipment.—

If the chief place of business of a debtor is in this Commonwealth, this division governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting

equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern.

If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this Commonwealth.

For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(c) Incoming property already subject to security interest.—If personal property other than that governed by subsections (a) and (b) is already subject to a security interest when it is brought into this Commonwealth, the validity of the security interest in this Commonwealth is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this Commonwealth and it was brought into this Commonwealth within 30 days after the security interest attached for purposes other than transportation through this Commonwealth, then the validity of the security interest in this Commonwealth is to be determined by the law of this Commonwealth. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this Commonwealth, the security interest continues perfected in this Commonwealth for four months and also thereafter if within the four-month period it is perfected in this Commonwealth. The security interest may also be perfected in this Commonwealth after the expiration of the four-month period; in such case perfection dates from the time of perfection in this Commonwealth. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this Commonwealth, it may be perfected in this Commonwealth; in such case perfection dates from the time of perfection in this Commonwealth.

(d) Certificate of title to indicate security interest.—Notwithstanding subsections (b) and (c), if personal property is covered by a certificate of title issued under a statute of this Commonwealth or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(e) Records of accounts and contract rights outside United States.—Notwithstanding subsection (a) and section 9302 (relating to when filing

is required to perfect security interest), if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this Commonwealth or the transaction which creates the security interest otherwise bears an appropriate relation to this Commonwealth, this division governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.] *Perfection of security interests in multiple state transactions.*

(a) Documents, instruments and ordinary goods. —

(1) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (b), mobile goods described in subsection (c) and minerals described in subsection (e).

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(3) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(4) When collateral is brought into and kept in this Commonwealth while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Chapter 93 (relating to rights of third parties; perfected and unperfected security interests; rules of priority) to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this Commonwealth, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter; and

(iii) for the purpose of priority over a buyer of consumer goods (section 9307(b)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(b) Certificate of title.—

(1) This subsection applies to goods covered by a certificate of title issued under a statute of this Commonwealth or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(3) Except with respect to the rights of a buyer described in paragraph (4), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this Commonwealth and thereafter covered by a certificate of title issued by this Commonwealth is subject to the rules stated in subsection (a)(4).

(4) If goods are brought into this Commonwealth while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this Commonwealth and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(c) Accounts, general intangibles and mobile goods.—

(1) This subsection applies to accounts (other than an account described in subsection (e) relating to minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (b).

(2) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(3) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and

the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(4) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(5) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the location of the debtor to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(d) Chattel paper.—The rules stated for goods in subsection (a) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (c) apply to a nonpossessory security interest in chattel paper but the security interest may not be perfected by notification to the account debtor.

(e) Minerals.—Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead, are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

§ 9104. Transactions excluded from division.

This division does not apply:

(1) to a security interest subject to any statute of the United States [such as the Ship Mortgage Act, 1920,] to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to the lien of a landlord;

(3) to a lien given by statute or other rule of law for services or materials except as provided in section 9310 on priority of such liens;

(4) to a transfer of a claim for wages, salary or other compensation of an employee;

(5) to [an equipment trust covering railway rolling stock;] a transfer by a government or governmental subdivision or agency;

(6) to a sale of accounts[, **contract rights**] or chattel paper as a part of a sale of the business out of which they arose, or an assignment of accounts[, **contract rights**] or chattel paper which is for the purpose of collection only, or a transfer of a [**contract**] right *to payment under a contract* to an assignee who is also to do the performance under the contract *or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness*;

(7) to a transfer of an interest or claim in or under any policy of insurance, *except as provided with respect to proceeds (section 9306) and priorities in proceeds (section 9312)*;

(8) to a right represented by a judgment (*other than a judgment taken on a right to payment which was collateral*);

(9) to any right of set-off;

(10) except to the extent that provision is made for fixtures in section 9313 (relating to priority of security interests in fixtures), to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; **[or]**

(11) to a transfer in whole or in part of **[any of the following:**

(i) any claim arising out of tort; **or**

(ii) any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization]; **or**

(12) *to a transfer of an interest in any deposit account (section 9105(a)), except as provided with respect to proceeds (section 9306) and priorities in proceeds (section 9312).*

§ 9105. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

“Account debtor.” The person who is obligated on an account, chattel paper[, **contract right**] or general intangible.

“Chattel paper.” A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods *but a charter or other contract involving the use or hire of a vessel is not chattel paper*. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

“Collateral.” The property subject to a security interest, including accounts[, **contract rights**] and chattel paper which have been sold.

“Debtor.” The person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, including the seller of accounts[, **contract rights**] or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the division dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

“Deposit account.” *A demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit.*

“Document.” Document of title as defined in the general definitions of Division 1 (section 1201) *and a receipt of the kind described in section 7201(b) (relating to who may issue warehouse receipt; storage under government bond).*

“Encumbrance.” *Real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.*

“Goods.” All things which are movable at the time the security interest attaches or which are fixtures (section 9313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles[, **contract rights and other things in action**] *or minerals or the like (including oil and gas) before extraction.* “Goods” also includes *standing timber which is to be cut and removed under a conveyance or contract for sale*, the unborn young of animals and growing crops.

“Instrument.” A negotiable instrument (defined in section 3104), or a security (defined in section 8102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment.

“Mortgage.” *A consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.*

“Pursuant to commitment.” *An advance is made “pursuant to commitment” if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.*

“Security agreement.” An agreement which creates or provides for a security interest.

“Secured party.” A lender, seller or other person in whose favor there is a security interest, including a person to whom accounts[, **contract rights**] or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

“Transmitting utility.” *Any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.*

(b) Index of other definitions in division.—Other definitions applying to this division and the sections in which they appear are:

“Account.” Section 9106.

“Attach.” Section 9203.

“Construction mortgage.” Section 9313(a).

“Consumer goods.” Section 9109(1).

[“Contract right.” Section 9106.]

“Equipment.” Section 9109(2).

“Farm products.” Section 9109(3).

“*Fixture.*” Section 9313.

“*Fixture filing.*” Section 9313.

“General intangibles.” Section 9106.

“Inventory.” Section 9109(4).

“Lien creditor.” Section 9301(c).

“Proceeds.” Section 9306(a).

“Purchase money security interests.” Section 9107.

“*United States.*” Section 9103.

(c) Index of definitions in other divisions.—The following definitions in other divisions of this title apply to this division:

“Check.” Section 3104.

“Contract for sale.” Section 2106.

“Holder in due course.” Section 3302.

“Note.” Section 3104.

“Sale.” Section 2106.

(d) Applicability of general definitions and principles.—In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 9106. Definitions: “account”; [“contract right”]; “general intangibles.”

The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Account.” Any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, *whether or not it has been earned by performance.*

[“Contract right.” Any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper.]

“General intangibles.” Any personal property (including things in action) other than goods, accounts, [contract rights,] chattel paper, documents, [and] instruments *and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.*

§ 9114. *Consignment.*

(a) *General rule.—A person who delivers goods under a consignment which is not a security interest and who would be required by section 2326(c)(3) (relating to consignment sales) to file under this division has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:*

(1) *the consignor complies with the filing provision of Division 2 (relating to sales) with respect to consignments (section 2326(c)(3)) before the consignee receives possession of the goods;*

(2) *the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor;*

(3) *the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and*

(4) *the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.*

(b) *Exception.—In the case of a consignment which is not a security interest and in which the requirements of subsection (a) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.*

§ 9203. [Enforceability] *Attachment and enforceability of security interest; proceeds, formal requisites.*

(a) [General rule] *Enforceability.*—Subject to the provisions of section 4208 on the security interest of a collecting bank and section 9113 on a security interest arising under the division on sales, a security interest is not enforceable against the debtor or third parties *with respect to the collateral and does not attach* unless:

(1) *the collateral is in the possession of the secured party[; or] pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;*

(2) [the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word “proceeds” is sufficient without further description to cover proceeds of any character.] *value has been given; and*

(3) *the debtor has rights in the collateral.*

(b) *Attachment.*—*A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (a) have taken place unless explicit agreement postpones the time of attaching.*

(c) *Rights to proceeds.*—*Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by section 9306 (relating to “proceeds”); rights of secured party on disposition of collateral).*

[(b)] (d) *Applicability of other statutes.*—*A transaction, although subject to this division, is also subject to the act of April 8, 1937*

(P.L.262, No.66), known as the "Consumer Discount Company Act," [and] the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance Act," *the act of August 14, 1963 (P.L.1082, No.464), known as the "Home Improvement Finance Act," and the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the "Goods and Services Installment Sales Act,"* insofar as any such statute by its terms applies to the transaction, and in the case of conflict between the provisions of this division and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

§ 9204. [When security interest attaches; after-acquired] *After-acquired* property; future advances.

[(a) When security interest attaches.—A security interest cannot attach until there is agreement (section 1201 (relating to general definitions)) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(b) When debtor acquires rights in collateral.—For the purposes of this section the debtor has no rights:

- (1) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;**
- (2) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;**
- (3) in a contract right until the contract has been made; or**
- (4) in an account until it comes into existence.**

(c) (a) After-acquired property clause authorized.—Except as provided in subsection [(d) (b)], a security agreement may provide that [collateral, whenever acquired, shall secure] any or all obligations covered by the security agreement *are to be secured by after-acquired collateral*.

[(d) (b) Attachment of security interest under after-acquired property clause.—No security interest attaches under an after-acquired property clause]:

- (1) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction; or**
- (2) to consumer goods other than accessions (section 9314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.**

[(e) (c) Security agreement may cover future advances.—Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (section 9105(a)).

§ 9205. Use or disposition of collateral without accounting permissible.

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts[, **contract rights**] or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

§ 9301. Persons who take priority over unperfected security interests;
right of "lien creditor."

(a) General rule.—Except as otherwise provided in subsection (b), an unperfected security interest is subordinate to the rights of:

(1) persons entitled to priority under section 9312 (relating to priorities among conflicting security interests in same collateral);

(2) a person who becomes a lien creditor [**without knowledge of the security interest and**] before [**it**] *the security interest* is perfected;

(3) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, *or is a buyer of farm products in ordinary course of business*, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; and

(4) in the case of accounts[, **contract rights,**] and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(b) Priority of unperfected purchase money security interest.—If the secured party files with respect to a purchase money security interest before or within [**ten**] 20 days after the *debtor receives possession of the collateral* [**comes into possession of the debtor**], he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(c) Definition of "lien creditor".—A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. [**Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.**]

(d) *Right of lien creditor.*—*A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the*

lien or pursuant to a commitment entered into without knowledge of the lien.

§ 9302. When filing is required to perfect security interest; security interests to which filing provisions of division do not apply.

(a) General rule.—A financing statement must be filed to perfect all security interests except the following:

(1) a security interest in collateral in possession of the secured party under section 9305 (relating to when possession by secured party perfects security interest without filing);

(2) a security interest temporarily perfected in instruments or documents without delivery under section 9304 (relating to perfection of security interest in instruments, documents, and goods covered by documents) or in proceeds for a ten-day period under section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral);

(3) **[a purchase money security interest in farm equipment having a purchase price not in excess of \$2,500; but filing is required for a fixture under section 9313 (relating to priority of security interests in fixtures) or for a motor vehicle required to be licensed] a security interest created by an assignment of a beneficial interest in a trust or a decedent’s estate;**

(4) a purchase money security interest in consumer goods; but filing is required **[for a fixture under section 9313 or]** for a motor vehicle required to be **[licensed] registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 9313;**

(5) an assignment of accounts **[or contract rights]** which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts **[or contract rights]** of the assignor; **[and]**

(6) a security interest of a collecting bank (section 4208) or arising under Division 2 (relating to sales) (see section 9113) or covered in subsection (c); *and*

(7) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(b) Assignment of perfected security interest.—If a secured party assigns a perfected security interest, no filing under this division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(c) When filing provisions of division inapplicable.—**[The filing provisions of this division do not apply to a security interest in property subject to a statute:**

(1) of the United States which provides for a national registration or filing of all security interests in such property; or

(2) of this Commonwealth which provides for central filing of security interests in such property, or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under

the statutes of this Commonwealth if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.

(d) Method of perfection when filing provisions inapplicable.—A security interest in property covered by a statute described in subsection (c) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.] *The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to:*

(1) *a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this division for filing of the security interest; or*

(2) *Title 75 (relating to vehicles), but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this division (Chapter 94) apply to a security interest in that collateral created by him as debtor; or*

(3) *a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (section 9103(b)).*

(d) *Method of perfection when filing provisions inapplicable.—Compliance with a statute or treaty described in subsection (c) is equivalent to the filing of a financing statement under this division, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 9103 (relating to perfection of security interests in multiple state transactions). Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this division.*

§ 9304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Chattel paper, negotiable documents, *money* and instruments.—A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in *money* or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (d) and (e) and section 9306(b) and (c) (relating to "proceeds"; rights of secured party on disposition of collateral).

(b) Goods in possession of issuer of negotiable document therefor.—During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(c) Goods in possession of bailee.—A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the receipt by the bailee of notification of the interest of the secured party or by filing as to the goods.

(d) Temporary perfection for new value given.—A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(e) Temporary perfection on transfer of possession.—A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(1) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, *but priority between conflicting security interests in the goods is subject to section 9312(c) (relating to priorities among conflicting security interests in same collateral)*; or

(2) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(f) Expiration of period of temporary perfection.—After the 21-day period in subsections (d) and (e) perfection depends upon compliance with applicable provisions of this division.

§ 9305. When possession by secured party perfects security interest without filing.

A security interest in letters of credit and advices of credit (section 5116(b)(1)), goods, instruments, *money*, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the interest of the secured party. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this division.

The security interest may be otherwise perfected as provided in this division before or after the period of possession by the secured party.

§ 9306. "Proceeds"; rights of secured party on disposition of collateral.

(a) Definition of "proceeds".—"Proceeds" includes whatever is received [when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the

right to payment is earned under a contract right.] upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(b) Continuity of security interest in collateral and identifiable proceeds.—Except where this division otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof [by the debtor] unless [his action was] the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(c) Status of security interest in proceeds.—The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

(1) a filed financing statement [covering the original collateral also covers proceeds; or] covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(2) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

[(2)] (3) the security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this division for original collateral of the same type.

(d) Effect of insolvency proceedings.—In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest *only in the following proceeds*:

(1) in identifiable noncash proceeds *and in separate deposit accounts containing only proceeds*;

(2) in identifiable cash proceeds in the form of money which is [not] *neither* commingled with other money [or] *nor* deposited in a [bank] *deposit* account prior to the insolvency proceedings;

(3) in identifiable cash proceeds in the form of checks and the like which are not deposited in a [bank] *deposit* account prior to the insolvency proceedings; and

(4) in all cash and [bank] *deposit* accounts of the debtor[, if other cash] *in which* proceeds have been commingled [or deposited in a bank account,] *with other funds* but the perfected security interest under this paragraph [(4)] is:

- (i) subject to any right of set-off; and
- (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings **[and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten-day period.] less the sum of:**

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (1) through (3).

(e) Priority of security interests in returned or repossessed goods.—If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(1) If the goods **[are] were** collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(2) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (1) to the extent that the transferee of the chattel paper was entitled to priority under section 9308 (relating to purchase of chattel paper and **[nonnegotiable]** instruments).

(3) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (1).

(4) A security interest of an unpaid transferee asserted under paragraph (2) or (3) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

§ 9307. Protection of buyers of goods.

(a) Buyer in ordinary course of business.—A buyer in ordinary course of business (section 1201 (relating to general definitions)) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(b) Buyer of consumer goods **[and certain farm equipment]**.—In the case of consumer goods **[and in the case of farm equipment having an original purchase price not in excess of \$2,500 (other than fixtures, see**

section 9313)], a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes **[or his own farming operations]** unless prior to the purchase the secured party has filed a financing statement covering such goods.

(c) Future advances.—A buyer other than a buyer in ordinary course of business (subsection (a)) takes free of a security interest to the extent that it secures further advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period.

§ 9308. Purchase of chattel paper and **[nonnegotiable]** instruments.

[A purchaser of chattel paper or a nonnegotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 9306), even though he knows that the specific paper is subject to the security interest.] A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(1) which is perfected under section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession) or under section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (section 9306) even though he knows that the specific paper or instrument is subject to the security interest.

§ 9312. Priorities among conflicting security interests in same collateral.

(a) Precedence of certain rules of priority.—The rules of priority stated **[in the following sections shall govern where applicable:**

Section 4208 (relating to security interest of collecting bank in items, accompanying documents and proceeds).

Section 9301 (relating to persons who take priority over unperfected security interests).

Section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents).

Section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral).

Section 9307 (relating to protection of buyers of goods).

Section 9308 (relating to purchase of chattel paper and nonnegotiable instruments).

Section 9309 (relating to protection of purchasers of instruments and documents).

Section 9310 (relating to priority of certain liens arising by operation of law).

Section 9313 (relating to priority of security interests in fixtures).

Section 9314 (relating to accessions).

Section 9315 (relating to priority when goods are commingled or processed).

Section 9316 (relating to priority subject to subordination).] *in other sections of this chapter and in the following sections shall govern where applicable:*

Section 4208 (relating to security interest of collecting bank in items, accompanying documents and proceeds).

Section 9103 (relating to perfection of security interests in multiple state transactions).

Section 9114 (relating to consignment).

(b) Security interests in crops.—A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(c) Purchase money security interests in inventory.—A *perfected* purchase money security interest in inventory [collateral] has priority over a conflicting security interest in the same [collateral] if:

(1) the purchase money security interest is perfected at the time the debtor receives possession of the collateral;

(2) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(3) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.] *inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:*

(1) the purchase money security interest is perfected at the time the debtor receives possession of the inventory;

(2) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (section 9304(e));

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(d) Other purchase money security interests.—A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral *or its proceeds* if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within **[ten] 20** days thereafter.

(e) Rules of priority in absence of other rules.—In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (c) and (d)), priority between conflicting security interests in the same collateral shall be determined **[as follows]**:

(1) in the order of filing if both are perfected by filing, regardless of which security interest attached first under section 9204(a) (relating to when security interest attaches) and whether it attached before or after filing;

(2) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under section 9204(a) and, in the case of a filed security interest, whether it attached before or after filing; and

(3) in the order of attachment under section 9204(a) so long as neither is perfected.] according to the following rules:

(1) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(2) So long as conflicting security interests are unperfected, the first to attach has priority.

[(f) Status of continuously perfected security interest.—For the purpose of the priority rules of subsection (e), a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.]

(f) Proceeds.—For the purposes of subsection (e) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(g) Future advances.—If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (e) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

§ 9313. Priority of security interests in fixtures.

[(a) Applicability of section.—The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this division unless the structure remains personal property under applicable law. The law of this Commonwealth other than this title determines whether and when other goods become fixtures. This title does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(b) Attachment of interest before goods become fixtures.—A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (d).

(c) Attachment of interest after goods become fixtures.—A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (d) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(d) Subordination of fixture security interests.—The security interests described in subsections (b) and (c) do not take priority over:

(1) a subsequent purchaser for value of any interest in the real estate;

(2) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(3) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances;

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is

made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.]

(a) *Definitions.*—*The following words and phrases when used in this section and in the provisions of Chapter 94 (relating to filing) shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:*

“*Construction mortgage.*” *A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.*

“*Fixture filing.*” *The filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of section 9402(e) (relating to financing statements covering timber, minerals and fixtures).*

“*Fixtures.*” *Goods are “fixtures” when they become so related to particular real estate that an interest in them arises under real estate law.*

(b) *Building materials.*—*A security interest under this division may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this division in ordinary building materials incorporated into an improvement on land.*

(c) *Real estate law.*—*This division does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.*

(d) *Priority of perfected security interest in fixtures.*—*A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:*

(1) *the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;*

(2) *the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate;*

(3) *the fixtures are readily removable office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this division; or*

(4) *the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this division.*

(e) Priority of security interest in fixtures whether or not perfected.—A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(1) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner. If the right of the debtor terminates, the priority of the security interest continues for a reasonable time.

(f) Subordination to construction mortgage.—Notwithstanding subsection (d)(1) but otherwise subject to subsections (d) and (e), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(g) Subordination to encumbrancer or owner who is not the debtor.—In cases not within subsections (a) through (f), a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

[(e)] (h) Removal of fixtures upon default.—When [under subsections (b) or (c) and (d) a] the secured party has priority over [the claims of all persons who have interests in] all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Chapter 95 (relating to default), remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 9318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(a) Rights of account debtor against assignee.—Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 9206 (relating to agreement not to assert defenses against assignee) the rights of an assignee are subject to:

(1) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(b) Effect of contract modification on assignee.—So far as the right to payment *or a part thereof* under an assigned contract **[right has not already become an account,]** *has not been fully earned by performance*, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(c) Notification to account debtor of assignment.—The account debtor is authorized to pay the assignor until the account debtor receives notification that the **[account] amount due or to become due** has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(d) Contract term prohibiting assignment ineffective.—A term in any contract between an account debtor and an assignor **[which is ineffective if it prohibits assignment of an account [or contract right to which they are parties is ineffective] or prohibits creation of a security interest in a general intangible for money due or to become due or requires the consent of the account debtor to such assignment or security interest.**

§ 9401. Place of filing; erroneous filing; removal of collateral.

(a) Place of filing.—The proper place to file in order to perfect a security interest is as follows:

(1) When the collateral is equipment used in farming operations, or farm products, or accounts**[, contract rights]** or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the prothonotary in the county of the residence of the debtor or if the debtor is not a resident of this Commonwealth then in the office of the prothonotary in the county where the goods are kept, and in addition when the collateral is crops *growing or to be grown* in the office of the prothonotary in the county where the land on which the crops are growing or to be grown is located.

(2) When the collateral is **[goods which at the time the security interest attaches are or are to become fixtures,]** *timber to be cut or is minerals or the like (including oil and gas) or accounts subject to section 9103(e) (relating to perfection of security interests in multiple state transactions) or when the financing statement is filed as a fixture filing (section 9313) and the collateral is goods which are or are to become fixtures*, then in the office where a mortgage on the real estate **[concerned]** would be filed or recorded.

(3) In all other cases, in the office of the Secretary of the Commonwealth and in addition, if the debtor has a place of business in

only one county of this Commonwealth, also in the office of the prothonotary of such county, or, if the debtor has no place of business in this Commonwealth, but resides in the Commonwealth, also in the office of the prothonotary of the county in which he resides.

(b) **Effect of partially valid filing.**—A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this division and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(c) **Effect of change in location of debtor or collateral.**—A filing which is made in the proper county continues effective for four months after a change to another county of the residence of the debtor or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.

(d) **[Filing requirements when collateral brought into Commonwealth.—If collateral is brought into this Commonwealth from another jurisdiction, the] *Multiple state transactions.***—*The rules stated in section 9103 [(relating to accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest)] determine whether filing is necessary in this Commonwealth.*

(e) ***Security interest in collateral of transmitting utility.***—*Notwithstanding subsections (a) through (d) and subject to section 9302(c) (relating to when filing provisions of division inapplicable), the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of the Commonwealth. This filing constitutes a fixture filing (section 9313) as to the collateral described therein which is or is to become fixtures.*

(f) ***Residence of organizations.***—*For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.*

§ 9402. Formal requisites of financing statement; amendments; *mortgage as financing statement.*

(a) **General rule.**—A financing statement is sufficient if it *gives the names of the debtor and the secured party*, is signed by the debtor **[and the secured party]**, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may

be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown [or goods which are or are to become fixtures], the statement must also contain a description of the real estate concerned. *When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 9103(e) (relating to perfection of security interests in multiple state transactions) or when the financing statement is filed as a fixture filing (section 9313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (e).* A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by [both parties] the debtor. *A carbon, photographic or other reproduction of a security agreement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this Commonwealth.*

(b) Effect when signed only by secured party.—A financing statement which otherwise complies with subsection (a) is sufficient [although] when it is signed [only] by the secured party [when] instead of the debtor if it is filed to perfect a security interest in the following:

(1) Collateral already subject to a security interest in another jurisdiction when it is brought into this Commonwealth or when the location of the debtor is changed in this Commonwealth. Such a financing statement must state that the collateral was brought into this Commonwealth or that the location of the debtor was changed to this Commonwealth under such circumstances.

(2) Proceeds under section 9306 (relating to “proceeds”; rights of secured party on disposition of collateral), if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) Collateral as to which the filing has lapsed.

(4) Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (g)).

(c) Form.—A form substantially as follows is sufficient to comply with subsection (a):

Name of debtor (or assignor).....
Address:
Name of secured party (or assignee).....
Address:

1. This financing statement covers the following types (or items) of property: (Describe).

2. (If collateral is crops) The above described crops are growing or are to be grown on: (Describe Real Estate).

[3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate).]

3. *(If applicable) The above goods are to become fixtures on:*
(Describe Real Estate).

and the financing statement is to be filed in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is.

4. (If [proceeds or] products of collateral are claimed) [(Proceeds)—(Products)] *Products* of the collateral are also covered.

(Use whichever is applicable)

Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

(d) **Amendments.**—[The term “financing statement” as used in this division means the original financing statement and any amendments but if] *A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this division, unless the context otherwise requires, the term “financing statement” means the original financing statement and any amendments.*

(e) **Financing statements covering timber, minerals and fixtures.**—*A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to section 9103(e) or a financing statement filed as a fixture filing (section 9313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records and the financing statement must contain a description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.*

(f) **Mortgage as financing statement.**—*A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:*

- (1) *the goods are described in the mortgage by item or type;*
- (2) *the goods are or are to become fixtures related to the real estate described in the mortgage;*
- (3) *the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and*
- (4) *the mortgage is duly recorded.*

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(g) **Sufficiency of name of the debtor.**—*A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing*

is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

[(e)] (h) Effect of minor errors.—A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

§ 9403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(a) What constitutes filing.—Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this division.

(b) Duration of effectiveness of filing *in general*.—**[A] Except as provided in subsection (e), a** filed financing statement **[which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement]** is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses **[on the expiration of such 60-day period after a stated maturity date or]** on the expiration of **[such] the** five-year period**[, as the case may be,]** unless a continuation statement is filed prior to the lapse. *If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later.* Upon **[such]** lapse the security interest becomes unperfected, *unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse. [A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.]*

(c) Continuation statement.—A continuation statement may be filed by the secured party **[(i) within six months before and 60 days after a stated maturity date of five years or less, and (ii) otherwise]** within six months prior to the expiration of the five-year period specified in subsection (b). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. *A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with section 9405(b) (relating to separate statement of assignment) including payment of the required fee.* Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in sub-

section (b) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it *immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (e) shall be retained.*

(d) Duties of filing officer.—[A] *Except as provided in subsection (f), a filing officer shall mark each statement with a [consecutive] file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. [The Secretary of the Commonwealth shall not be required to index the statement according to the name of the secured party.]*

(e) *Exceptions to duration of effectiveness of filing.—If the debtor is a transmitting utility (section 9401(e) (relating to security interest in collateral of transmitting utility)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 9402(f) (relating to mortgage as financing statement) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.*

(f) *Indexing of certain financing statements.—When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to section 9103(e) (relating to minerals) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this Commonwealth provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.*

§ 9404. Termination statement.

(a) General rule.—[Whenever] *If a financing statement covering consumer goods is filed on or after the effective date of this sentence, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the*

secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must [include or] be accompanied by [the assignment or a] payment of the required fee and a separate written statement of assignment signed by the secured party of record [that he has assigned the security interest to the signer of the termination statement.] complying with section 9405(b) (relating to separate statement of assignment). If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(b) Duties of filing officer.—On presentation to the filing officer of such a termination statement he must note it in the index. [Unless a statute on disposition of public records provides otherwise, the filing officer shall remove the financing statement from the files, mark it “terminated” and send or deliver the financing statement to the secured party.] *If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.*

§ 9405. Assignment of security interest; duties of filing officer.

(a) Assignment disclosed in financing statement.—A financing statement may disclose an assignment of a security interest in the collateral described in the *financing* statement by indication in the *financing* statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face [or back] of the statement. [Either the original secured party or the assignee may sign this statement as the secured party.] On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 9403(d) (relating to what constitutes filing).

(b) Separate statement of assignment.—A secured party may assign of record all or a part of his rights under a financing statement by the filing *in the place where the original financing statement was filed* of a

separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, *or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to section 9103(e) (relating to minerals), he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this Commonwealth provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (section 9402(f) (relating to mortgage as financing statement)) may be made only by an assignment of the mortgage in the manner provided by the law of this Commonwealth other than this title.*

(c) Status of assignee as secured party.—After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

§ 9406. Release of collateral; duties of filing officer.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. *A statement of release signed by a person other than the secured party of record must be accompanied by payment of the required fee and a separate written statement of assignment signed by the secured party of record and complying with section 9405(b) (relating to separate statement of assignment).* Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement.

§ 9408. [Retention of microfilm or other copies in lieu of originals; admissibility of copies in evidence; duties of filing officer.

In lieu of retaining the originals of any or all papers filed with him, a filing officer may make microfilm, photographic, photostatic or other copies of them which accurately reproduce such originals and may thereafter dispose of the originals so copied, and any copy so made shall be admissible in evidence in any proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper shall have disposed of the original, then upon the filing of a termination state-

ment the filing officer shall be relieved of the duties imposed upon him by section 9404(b) (relating to termination statement), but instead shall note the termination statement on the index and shall send to the secured party an acknowledgment of the filing of the termination statement.] *Financing statements covering consigned or leased goods.*

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in section 9402 (relating to formal requisites of financing statement; amendments; mortgage as financing statement). The provisions of this chapter shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (section 1201). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

§ 9409. [(Reserved).] *Retention of microfilm or other copies in lieu of originals; admissibility of copies in evidence; duties of filing officer.*

In lieu of retaining the originals of any or all papers filed with him, a filing officer may make microfilm, photographic, photostatic or other copies of them which accurately reproduce such originals and may thereafter dispose of the originals so copied, and any copy so made shall be admissible in evidence in any proceeding with the same effect as though it were an original. If a filing officer upon making a copy of a paper shall have disposed of the original, then upon the filing of a termination statement the filing officer shall be relieved of the duties imposed upon him by section 9404(b) (relating to duties of filing officer), but instead shall note the termination statement on the index and shall send to the secured party an acknowledgment of the filing of the termination statement.

§ 9501. Default; procedure when security agreement covers both real and personal property.

(a) Rights and remedies of secured party.—When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter *and, except as limited by subsection (c), those provided in the security agreement.* He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9207 (*relating to rights and duties when collateral in possession of secured party*). The rights and remedies referred to in this subsection are cumulative.

(b) Rights and remedies of debtor.—After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement and those provided in section 9207.

(c) Limitation on waiver of certain provisions.—To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the following provisions of this title may not be waived or varied except as provided with respect to compulsory disposition of collateral ([section] sections 9504(c) and 9505[(a)]) and with respect to redemption of collateral (section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(1) Section 9502(b) and section 9504(b) insofar as they require accounting for surplus proceeds of collateral.

(2) Section 9504(c) and section 9505(a) which deal with disposition of collateral.

(3) Section 9505(b) which deals with acceptance of collateral as discharge of obligation.

(4) Section 9506 which deals with redemption of collateral.

(5) Section 9507(a) which deals with the liability of secured party for failure to comply with this chapter.

(d) Rights of secured party when agreement covers real and personal property.—If the security agreement covers both real and personal property, the secured party may proceed under this chapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this chapter do not apply.

(e) Reduction of secured claim to judgment.—When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

§ 9502. Collection rights of secured party.

(a) General rule.—When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9306 (relating to “proceeds”); rights of secured party on disposition of collateral).

(b) Limitations.—A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise

agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts[, **contract rights,**] or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

§ 9504. Right of secured party to dispose of collateral after default; effect of disposition.

(a) Disposition of collateral and application of proceeds.—A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to Division 2 (relating to sales). The proceeds of disposition shall be applied in the order following to:

(1) the reasonable expenses of retaking, holding, preparing for sale *or lease*, selling, *leasing* and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) the satisfaction of indebtedness secured by the security interest under which the disposition is made; and

(3) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(b) Rights of parties in case of surplus or deficiency.—If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts[, **contract rights,**] or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(c) Manner of disposition.—Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, **[and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this Commonwealth or who is known by the secured party to have a security interest in the collateral.]** *if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer*

goods, no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before renunciation by the debtor of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(d) Rights of purchaser for value of disposed collateral.—When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the rights of the debtor therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings:

(1) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(2) in any other case, if the purchaser acts in good faith.

(e) Right of subrogation of person liable to secured party.—A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

§ 9505. Compulsory disposition of collateral; acceptance of collateral as discharge of obligation.

(a) Compulsory disposition of collateral.—If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this chapter a secured party who has taken possession of collateral must dispose of it under section 9504 (relating to right of secured party to dispose of collateral after default) and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under section 9507(a) **[on] (relating to liability of secured party for failure to comply with chapter).**

(b) Acceptance of collateral as discharge of obligation.—In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor **[and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this Commonwealth or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive**

notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession the secured party must dispose of the collateral under section 9504.] *if he has not signed, after default, a statement renouncing or modifying his rights under this subsection. In the case of consumer goods, no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before renunciation by the debtor of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under section 9504.* In the absence of such written objection the secured party may retain the collateral in satisfaction of the obligation of the debtor.

Section 2. Transition provisions in general.

Transactions validly entered into before the effective date of this act, and which were subject to the provisions of Title 13 of the Pennsylvania Consolidated Statutes (relating to commercial code) and which would be subject thereto under this act, if they had been entered into after the effective date of this act and the rights, duties and interests flowing from such transactions remain valid after the effective date of this act and may be terminated, completed, consummated or enforced as required or permitted after the effective date of this act. Security interests arising out of such transactions which are perfected when this act becomes effective shall remain perfected until they lapse as provided herein and may be continued, except as stated in section 4.

Section 3. Transition provision on change of requirement on filing.

A security interest for the perfection of which filing or the taking of possession was required prior to this act and which attached prior to the effective date of this act but was not perfected shall be deemed perfected on the effective date of this act if this act permits perfection without filing or authorizes filing in the office where a prior ineffective filing was made.

Section 4. Transition provision on changes of place of filing.

(a) Financing statements filed prior to this act.—A financing statement or continuation statement filed prior to the effective date of this act which shall not have lapsed prior to that date shall remain effective for the period provided prior thereto, but not less than five years after the filing.

(b) Collateral acquired subsequent to this act.—With respect to any collateral acquired by the debtor subsequent to the effective date of this act, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office that would be appropriate to perfect the security interests in the new collateral after the effective date of this act.

(c) Continuation.—The effectiveness of any financing statement or continuation statement filed prior to the effective date of this act may be continued by a continuation statement as permitted in this act, except that if filing is in an office where there was no previous financing statement required, a new financing statement conforming to section 5 shall be filed in that office.

(d) Mortgage as fixture filing.—If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if this act had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under 13 Pa.C.S. § 9402(f) (relating to mortgage as financing statement) as revised by this act.

Section 5. Required refilings.

(a) General rule.—If a security interest is perfected or has priority when this act takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons after the effective date, the perfection and priority rights of the security interest continue until three years after the effective date of this act. The perfection will then lapse unless a financing statement is filed as provided in subsection (d) or unless the security interest is perfected otherwise than by filing.

(b) Perfection under other law.—If a security interest is perfected when this act takes effect under a law other than the Uniform Commercial Code prior thereto which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the effective date of this act, unless a financing statement is filed as provided in subsection (d) or unless the security interest is perfected otherwise by filing, or unless under 13 Pa.C.S. § 9302(c) (relating to when filing provisions of division inapplicable) the other law continues to govern filing.

(c) Perfection under repealed acts.—If a security interest is perfected by a filing, refiling or recording under a law repealed by this act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (d) or unless the security interest is perfected otherwise than by filing.

(d) Filing before perfection lapses.—A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse, if perfection had been obtained by a filing under a statute other than the Uniform Commercial Code prior to the effective date of this act, or a filing in an office which would be improper thereunder after the effective date of this act. Any such financing statement may be signed by either the debtor or the secured party. It shall identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this act), state the office

where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by this act is still effective. 13 Pa.C.S. § 9401 (relating to place of filing; erroneous filing; removal of collateral) and 13 Pa.C.S. § 9403 (relating to what constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer) as amended by this act, determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of 13 Pa.C.S. § 9403(c) as amended by this act for continuation statements apply to such a financing statement.

Section 6. Transition provisions as to priorities.

Except as otherwise provided in the transition provisions of this act, the provisions of Title 13 of the Pennsylvania Consolidated Statutes (relating to commercial code) in effect prior to the effective date of this act shall apply to any questions of priority if the positions of the parties were fixed prior to the effective date of this act. In other cases, questions of priority shall be determined as provided by this act.

Section 7. Effective date.

This act shall take effect at 12:01 a.m. on the 180th day following the date of final enactment of this act.

APPROVED—The 26th day of November, A. D. 1982.

DICK THORNBURGH