

No. 2001-18

AN ACT

SB 330

Amending Titles 12 (Commerce and Trade), 13 (Commercial Code), 15 (Corporations and Unincorporated Associations), 30 (Fish), 42 (Judiciary and Judicial Procedure), 66 (Public Utilities) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, extensively revising provisions on secured transactions; revising provisions on letters of credit; making editorial changes; and making repeals.

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

Section 1. This amendatory act shall be known and may be cited as the Uniform Commercial Code Modernization Act of 2001.

Section 2. Section 5108(e) of Title 12 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5108. Defenses, liability and protection of transferee.

* * *

(e) Certain transfers not fraudulent.—A transfer is not fraudulent under section 5104(a)(2) or 5105 (relating to transfers fraudulent as to present creditors) if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with 13 Pa.C.S. Div. 9 (relating to secured transactions), [~~other than a retention of collateral under 13 Pa.C.S. § 9505(b) (relating to acceptance of collateral as discharge of obligation).~~] *other than an acceptance of collateral in full or partial satisfaction of the obligations it secures under 13 Pa.C.S. § 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral).*

The references to 13 Pa.C.S. Div. 9 and 13 Pa.C.S. [~~§ 9505(b)~~] § 9620 in paragraph (2) shall also be deemed to refer to the corresponding provisions of the Uniform Commercial Code as in effect in any other jurisdiction.

Section 3. Title 12 is amended by adding a chapter to read:

CHAPTER 98

ASSEMBLED INDUSTRIAL PLANT DOCTRINE

Sec.

9801. Assembled industrial plant doctrine abolished.

§ 9801. Assembled industrial plant doctrine abolished.

(a) General rule.—The assembled industrial plant doctrine, sometimes referred to as the integrated industrial plant doctrine or the integrated industrial mortgage doctrine, is abolished. Whether personal property

placed or installed in an industrial, commercial or other establishment is a fixture shall be determined by other law.

(b) Eminent domain not affected.—Subsection (a) shall not be construed to affect the application of the assembled economic unit doctrine in the context of eminent domain.

(c) Applicability.—This section shall not apply to actions or proceedings commenced before the effective date of this section, nor shall it affect construction of a mortgage or other instrument creating an interest in real estate entered into before the effective date of this section. Subsection (a) shall not be construed to affirm the continuing applicability or scope of the assembled industrial plant doctrine before the effective date of this section.

Section 4. Section 1105(b) of Title 13 is amended to read:

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

* * *

(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).

Sections 2A105 (relating to territorial application of division to goods covered by certificate of title) and 2A106 (relating to limitation on power of parties to consumer lease to choose applicable law and judicial forum).

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

Section 4A507 (relating to choice of law).

Section 5116 (relating to choice of law and forum).

Section 8110 (relating to applicability; choice of law).

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

Subchapter A of Chapter 93 (relating to law governing perfection and priority).

Section 5. The definitions of “buyer in ordinary course of business,” “buying,” “purchase” and “security interest” in section 1201 of Title 13 are amended to read:

§ 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:

* * *

“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.] *that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Division 2 (relating to sales) may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.*

* * *

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

* * *

“Security interest.”

(1) General definition.—A security interest means an interest in personal property or fixtures which secures payment or performance of an obligation.

(2) [Retention or reservation of title to delivered goods.—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.”

(3) Buyers of accounts or chattel paper] *Interest of consignor or buyer under Division 9.*—The term “security interest” also includes any interest of a *consignor and a buyer of accounts [or], chattel paper [which], a payment intangible or a promissory note in a transaction that* is subject to Division 9 (relating to secured transactions).

[(4)] (3) Buyer’s interest in identified goods.—The special property interest of a buyer of goods on identification of those goods to a contract

for sale under section 2401 (relating to passing of title; reservation for security; limited application of section) is not a “security interest,” but a buyer may also acquire a “security interest” by complying with Division 9.

(4) Sellers and lessors of goods.—Except as otherwise provided in section 2505 (relating to shipment by seller under reservation), the right of a seller or lessor of goods under Division 2 (relating to sales) or 2A (relating to leases) to retain or acquire possession of the goods is not a “security interest,” but a seller or lessor may also acquire a “security interest” by complying with Division 9. 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.”

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

(6) Determination of lease or security interest.—Whether a transaction creates a lease or security interest is determined by the facts of each case; however:

(i) A transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(A) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(B) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(C) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(D) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(ii) A transaction does not create a security interest merely because it provides that:

(A) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(B) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees, or service or maintenance costs with respect to the goods;

(C) the lessee has an option to renew the lease or to become the owner of the goods;

(D) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(E) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(iii) For purposes of determining whether the transaction is a lease or a security interest:

(A) Additional consideration is not nominal if:

(I) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(II) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(B) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(C) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

Section 6. Section 1206(c) of Title 13 is amended by adding a paragraph to read:

§ 1206. Statute of frauds for kinds of personal property not otherwise covered.

(c) Qualified financial contracts.—

(6) *Nothing in this subsection or in section 2201(d) shall be construed to affect or limit the application to a qualified financial*

contract of any other law validating records, signatures or transactions made or evidenced by nontraditional media.

Section 7. Sections 2103(c) and 2104 of Title 13 are amended to read:

§ 2103. Definitions and index of definitions.

* * *

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

“Check.” Section 3104.

“Consignee.” Section 7102.

“Consignor.” Section 7102.

“Consumer goods.” Section [9109] 9102.

“Dishonor.” Section 3502.

“Draft.” Section 3104.

* * *

§ 2104. Definitions: “merchant”; “between merchants”; “financing agency.”

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:

“Between merchants.” Between merchants means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

“Financing agency.” A bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the draft of the seller or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (see section 2707).

“Merchant.” A person who:

(1) deals in goods of the kind; or

(2) otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

Section 8. Section 2210(b) and the headings of subsections (c), (d) and (e) of Title 13 are amended and the section is amended by adding a subsection to read:

§ 2210. Delegation of performance; assignment of rights.

* * *

(b) Assignment of rights.—[Unless] *Except as otherwise provided in section 9406 (relating to discharge of account debtor; notification of*

assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective), unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of due performance by the assignor of his entire obligation can be assigned despite agreement otherwise.

(c) Effect of security interest.—The creation, attachment, perfection or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (b) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection and enforcement of the security interest remain effective, but:

(1) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and

(2) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

[(c)] (d) Assignment prohibition limited to performance.— * **

[(d)] (e) Effect and enforceability of general assignment.— * **

[(e)] (f) Security for assignment delegating performance.— * **

Section 9. Section 2326 heading, (b), (c) and (d) heading of Title 13 are amended to read:

§ 2326. Sale on approval and sale or return; [consignment sales and] rights of creditors.

* * *

(b) Rights of creditors of buyer generally.—[Except as provided in subsection (c), goods] Goods held on approval are not subject to the claims of the creditors of the buyer until acceptance; goods held on sale or return are subject to such claims while in the possession of the buyer.

[(c) Consignment sales.—Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on

memorandum.” However, this subsection is not applicable if the person making delivery:

(1) complies with an applicable law providing for the interest of a consignor or the like to be evidenced by a sign;

(2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(3) complies with the filing provisions of Division 9 (relating to secured transactions).

(d)] (c) Treatment of “or return” term.—* * *

Section 10. Section 2502 heading, (a) and (b) heading of Title 13 are amended and the section is amended by adding a subsection to read:

§ 2502. Right of buyer to goods on *repudiation, failure to deliver or insolvency of seller.*

(a) General rule.—Subject to [subsection (b)] *subsections (b) and (c)* and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of section 2501 (relating to insurable interest in goods; manner of identification of goods) may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(1) *in the case of goods bought for personal, family or household purposes, the seller repudiates or fails to deliver as required by the contract; or*

(2) *in all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.*

(b) *Vesting.—The buyer’s right to recover the goods under subsection (a)(1) vests upon acquisition of a special property even if the seller had not then repudiated or failed to deliver.*

[(b)] (c) Identification made by buyer.—* * *

Section 11. Sections 2512(a)(2), 2716(c), 2A103(c), 2A303(a), (b), (c), (d), (e), (f) heading, (g) heading and (h) heading, 2A307, 2A309(a), 3103(a) introductory paragraph, 4105 introductory paragraph, 4210(c), 4A103(a) introductory paragraph and 4A105(a) introductory paragraph of Title 13 are amended to read:

§ 2512. Payment by buyer before inspection.

(a) General rule.—Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

* * *

(2) despite tender of the required documents the circumstances would justify injunction against honor under [the provisions of] this title [(section 5114 (relating to duty and privilege of issuer to honor; right to reimbursement))], *including section 5109(b) (relating to conditions for injunction).*

* * *

§ 2716. Right of buyer to specific performance or replevin.

* * *

(c) Replevin.—The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing, or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. *In the case of goods bought for personal, family or household purposes, the buyer's right of replevin vests upon acquisition of a special property even if the seller had not then repudiated or failed to deliver.*

§ 2A103. Definitions and index of definitions.

* * *

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

“Account.” Section [9106] 9102(a).

“Between merchants.” Section 2104.

“Buyer.” Section 2103(a).

“Chattel paper.” Section [9105(a)] 9102(a).

“Consumer goods.” Section [9109(1)] 9102(a).

“Document.” Section [9105(a)] 9102(a).

“Entrusting.” Section 2403(c).

“General [intangibles.” Section 9106.] *intangible.*” Section 9102(a).

“Good faith.” Section 2103(a).

“Instrument.” Section [9105(a)] 9102(a).

“Merchant.” Section 2104.

“Mortgage.” Section [9105(a)] 9102(a).

“Pursuant to commitment.” Section [9105(a)] 9102(a).

“Receipt.” Section 2103(a).

“Sale.” Section 2106(a).

“Sale on approval.” Section 2326.

“Sale or return.” Section 2326.

“Seller.” Section 2103(a).

* * *

§ 2A303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

(a) Definition.—As used in this section, the term “creation of a security interest” includes the sale of a lease contract that is subject to Division 9 (relating to secured transactions) by reason of section [9102(a)(2) (relating to policy and subject matter of division)] 9109(a)(3) (relating to scope).

(b) General rule.—Except as provided in [subsections (c) and (d),] *subsection (c) and section 9407 (relating to restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest)*, a provision in a lease agreement which:

(1) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or

(2) makes such a transfer an event of default;

gives rise to the rights and remedies provided in subsection [(e)] (d), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

[(c) Certain provisions in lease agreement not enforceable.—A provision in a lease agreement which prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection (e) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(d)] (c) Transfer of right to damages.—A provision in a lease agreement which:

(1) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation; or

(2) makes such a transfer an event of default;

is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection [(e).] (d).

[(e)] (d) Certain rights and remedies.—Subject to [subsections (c) and (d):] subsection (c) and section 9407:

(1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 2A501(b) (relating to default: procedure).

(2) If paragraph (1) is not applicable and if a transfer is made that is prohibited under a lease agreement or materially impairs the prospect of obtaining return performance by, materially changes the duty of or

materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

[(f)] (e) Effect and enforceability of general transfer.—* * *

[(g)] (f) Effect of delegation of performance.—* * *

[(h)] (g) Requirements for [written] prohibition of transfer in consumer lease.—* * *

§ 2A307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(a) Creditor of lessee.—Except as otherwise provided in section 2A306 (relating to priority of certain liens arising by operation of law), a creditor of a lessee takes subject to the lease contract.

(b) Creditor of lessor.—Except as otherwise provided in [subsections (c) and (d)] *subsection (c)* and in sections 2A306 and 2A308 (relating to special rights of creditors), a creditor of a lessor takes subject to the lease contract unless:

(1) the creditor holds a lien that attached to the goods before the lease contract became enforceable[;].

[(2) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(3) the creditor holds a security interest in the goods which was perfected (section 9303) before the lease contract became enforceable.

(c) Lessee in ordinary course of business.—A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 9303) and the lessee knows of its existence.

(d) Lessee not in ordinary course of business.—A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.]

(c) *Lessee.*—*Except as otherwise provided in sections 9317 (relating to interests which take priority over or take free of security interest or agricultural lien), 9321 (relating to licensee of general intangible and*

lessee of goods in ordinary course of business) and 9323 (relating to future advances), a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

§ 2A309. Lessor's and lessee's rights when goods become fixtures.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Construction mortgage.” A mortgage is a construction mortgage to the extent 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.

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

“Fixture filing.” The filing, in the office where a *record of a mortgage* on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section [9402(e) (relating to formal requisites of financing statement; amendments; mortgage as financing statement).] 9502(a) and (b) (relating to contents of financing statement; record of mortgage as financing statement; time of filing financing statement).

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

“Purchase money lease.” A lease is a purchase money lease unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.

* * *

§ 3103. 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:

* * *

§ 4105. “Bank”; “depository bank”; “intermediary bank”; “collecting bank”; “payor bank”; “presenting bank.”

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:

* * *

§ 4210. Security interest of collecting bank in items, accompanying documents and proceeds.

* * *

(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. 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 to that extent and is subject to Division 9 (relating to secured transactions), but:

(1) no security agreement is necessary to make the security interest enforceable (section 9203[(a)(1)](b)(3)(i) (relating to attachment and enforceability of security interest; proceeds[,]; *supporting obligations*; 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.

§ 4A103. Payment order; definitions.

(a) Definition of “payment order” and related terms.—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:

* * *

§ 4A105. Other 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:

* * *

Section 12. Division 5 of Title 13 is repealed.

Section 13. Title 13 is amended by adding a division to read:

DIVISION 5
LETTERS OF CREDIT

Chapter

51. Letters of Credit

CHAPTER 51
LETTERS OF CREDIT

Sec.

5101. Short title of division.

5102. Definitions.

5103. Scope.

5104. Formal requirements.

5105. Consideration.

5106. Issuance, amendment, cancellation and duration.

5107. Confirmer, nominated person and adviser.

5108. Issuer’s rights and obligations.

5109. Fraud and forgery.

5110. Warranties.

5111. Remedies.

5112. Transfer of letter of credit.

5113. Transfer by operation of law.

5114. Assignment of proceeds.

5115. Statute of limitations.

5116. Choice of law and forum.

5117. Subrogation of issuer, applicant and nominated person.

5118. Security interest of issuer or nominated person.

§ 5101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Article 5, Letters of Credit.

§ 5102. Definitions.

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

“Adviser.” A person who, at the request of the issuer, a confirmer or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed or amended.

“Applicant.” A person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

“Beneficiary.” A person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

“Confirmer.” A nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

“Dishonor (of a letter of credit).” Failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

“Document.” A draft or other demand, document of title, investment security, certificate, invoice or other record, statement or representation of fact, law, right or opinion which is:

- (1) presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 5108(e) (relating to standard practice); and
- (2) capable of being examined for compliance with the terms and conditions of the letter of credit.

A document may not be oral.

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

“Honor (of a letter of credit).” Performance of the issuer’s undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, “honor” occurs:

- (1) upon payment;
- (2) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or
- (3) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

“Issuer.” A bank or other person that issues a letter of credit but does not include an individual who makes an engagement for personal, family or household purposes.

“Letter of credit.” A definite undertaking that satisfies the requirements of section 5104 (relating to formal requirements) by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

“Nominated person.” A person whom the issuer:

(1) designates or authorizes to pay, accept, negotiate or otherwise give value under a letter of credit; and

(2) undertakes by agreement or custom and practice to reimburse.

“Presentation.” Delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

“Presenter.” A person making a presentation as or on behalf of a beneficiary or nominated person.

“Record.” Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Successor of a beneficiary.” A person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator and receiver.

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

“Accept” or “acceptance.” Section 3409 (relating to acceptance of draft; certified check).

“Value.” Sections 3303 (relating to value and consideration) and 4211 (relating to when bank gives value for purposes of holder in due course).

(c) Applicability of general definitions and principles.—Division 1 (relating to general provisions) contains certain additional general definitions and principles of construction and interpretation applicable throughout this division.

§ 5103. Scope.

(a) Applicability of division.—This division applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) Effect of statement of rule in this division.—The statement of a rule in this division does not by itself require, imply or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this division.

(c) Variation by agreement or undertaking.—With the exception of this subsection, subsections (a) and (d), the definitions of “issuer” and “letter of credit” under section 5102(a) (relating to definitions) and sections 5106(d)

(relating to perpetual letters of credit) and 5114(d) (relating to assignment of proceeds), and except to the extent prohibited under sections 1102(c) (relating to variation of title by agreement) and 5117(d) (relating to time at which subrogation rights arise), the effect of this division may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this division.

(d) Independence of rights and obligations of issuer.—Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

§ 5104. Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment or cancellation may be issued in any form that is a record and is authenticated:

(1) by a signature; or

(2) in accordance with the agreement of the parties or the standard practice referred to in section 5108(e) (relating to standard practice).

§ 5105. Consideration.

Consideration is not required to issue, amend, transfer or cancel a letter of credit, advice or confirmation.

§ 5106. Issuance, amendment, cancellation and duration.

(a) Issuance; revocability.—A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) Effect of amendment or cancellation in certain circumstances.—After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) No stated expiration date.—If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) Perpetual letters of credit.—A letter of credit that states that it is perpetual expires five years after its stated date of issuance or, if none is stated, after the date on which it is issued.

§ 5107. Confirmer, nominated person and adviser.

(a) Rights and obligations of a confirmer.—A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and

obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) Nominated person.—A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) Advisers.—A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation or amendment is enforceable as issued.

(d) Notice to transferee beneficiary.—A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment or advice has the rights and obligations of an adviser under subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment or advice received by the person who so notifies.

§ 5108. Issuer's rights and obligations.

(a) Duty to honor, dishonor.—Except as otherwise provided in section 5109 (relating to fraud and forgery), an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 5113 (relating to transfer by operation of law) and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) Time for honor, etc.—An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) to honor;

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(3) to give notice to the presenter of discrepancies in the presentation.

(c) Preclusion generally.—Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Preclusion for fraud, forgery or expiration.—Failure to give the notice specified in subsection (b) or to mention fraud, forgery or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in section 5109(a) or expiration of the letter of credit before presentation.

(e) Standard practice.—An issuer shall observe standard practice of financial institutions that regularly issue letters of credit.

(f) Issuer not responsible for certain matters.—An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement or transaction;

(2) an act or omission of others; or

(3) observance or knowledge of the usage of a particular trade other than standard practice referred to in subsection (e).

(g) Nondocumentary conditions.—If an undertaking constituting a letter of credit under the definition of “letter of credit” under section 5102(a) (relating to definitions) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) Disposition of documents following dishonor.—An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) Certain consequences of honor.—An issuer that has honored a presentation as permitted or required by this division:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter;

(3) is precluded from asserting a right of recourse on a draft under sections 3414 (relating to obligation of drawer) and 3415 (relating to obligation of indorser);

(4) except as otherwise provided in sections 5110 (relating to warranties) and 5117 (relating to subrogation of issuer, applicant and nominated person), is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit.

§ 5109. Fraud and forgery.

(a) Fraud and forgery generally.—If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) the issuer shall honor the presentation if honor is demanded by:

(i) a nominated person who has given value in good faith and without notice of forgery or material fraud;

(ii) a confirmer who has honored its confirmation in good faith;

(iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or

(iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) Conditions for injunction.—If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this Commonwealth have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

§ 5110. Warranties.

(a) Warranties generally.—If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made and the applicant that there is no fraud or forgery of the kind described in section 5109(a) (relating to fraud and forgery generally); and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) Warranties arising under other divisions.—The warranties in subsection (a) are in addition to warranties arising under Divisions 3 (relating to negotiable instruments), 4 (relating to bank deposits and collections), 7 (relating to warehouse receipts, bills of lading and other documents of title) and 8 (relating to investment securities) because of the presentation or transfer of documents covered by any of those divisions.

§ 5111. Remedies.

(a) Wrongful dishonor or repudiation before presentation.—If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor or nominated

person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) Wrongful dishonor upon presentation; wrongful honor.—If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) Certain other breaches.—If an adviser or nominated person other than a confirmer breaches an obligation under this division or an issuer breaches an obligation not covered in subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b).

(d) Interest.—An issuer, nominated person or advisor who is found liable under subsection (a), (b) or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Attorney fees.—Reasonable attorney fees and other expenses of litigation may be awarded to the prevailing party in an action in which a remedy is sought under this division.

(f) Liquidated damages.—Damages that would otherwise be payable by a party for breach of an obligation under this division may be liquidated by agreement or undertaking but only in an amount or by a formula that is reasonable in light of the harm anticipated.

§ 5112. Transfer of letter of credit.

(a) Transfer generally.—Except as otherwise provided in section 5113 (relating to transfer by operation of law), unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Limitations on duty to recognize or carry out a transfer.—Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

- (1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 5108(e) (relating to standard practice and role of court) or is otherwise reasonable under the circumstances.

§ 5113. Transfer by operation of law.

(a) **Undisclosed successor.**—A successor of a beneficiary may consent to amendments, sign and present documents and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) **Disclosed successor.**—A successor of a beneficiary may consent to amendments, sign and present documents and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 5108(e) (relating to standard practice) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) **Determination of successor status, signature.**—An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) **Effect of honor of presentation by purported successor.**—Honor of a purported successor's apparently complying presentation under subsection (a) or (b) has the consequences specified in section 5108(i) (relating to certain consequences of honor) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 5109 (relating to fraud and forgery).

(e) **Right to decline to recognize presentation.**—An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) **Change of name.**—A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

§ 5114. Assignment of proceeds.

(a) **Definition.**—As used in this section, the term “proceeds of a letter of credit” means the cash, check, accepted draft or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) **Beneficiary's right to assign proceeds.**—A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) **Recognition of assignment of proceeds.**—An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) **Consent to assignment of proceeds.**—An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) **Rights of transferee beneficiary or nominated person.**—Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) **Certain rights not affected; relationship to Division 9.**—Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's right to proceeds is governed by Division 9 (relating to secured transactions) or other law. Against persons other than the issuer, transferee beneficiary or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Division 9 or other law.

§ 5115. Statute of limitations.

An action to enforce a right or obligation arising under this division must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach, except that, in the event of a fraud or forgery adversely affecting the aggrieved party, a cause of action accrues on the earlier of the date on which the fraud or forgery was discovered by the aggrieved party or the date on which the fraud or forgery could have been discovered by the aggrieved party by the exercise of reasonable diligence.

§ 5116. Choice of law and forum.

(a) **Express choice of law.**—The liability of an issuer, nominated person or advisor for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 5104

(relating to formal requirements) or by a provision in the person's letter of credit, confirmation or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Governing law otherwise.—Unless subsection (a) applies, the liability of an issuer, nominated person or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities, and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Role of custom or practice.—Except as otherwise provided in this subsection, the liability of an issuer, nominated person or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation or other undertaking is expressly made subject. If:

- (1) this division would govern the liability of an issuer, nominated person or adviser under subsection (a) or (b);
- (2) the relevant undertaking incorporates rules of custom or practice; and
- (3) there is conflict between this division and those rules as applied to that undertaking;

those rules govern except to the extent of any conflict with the nonvariable provisions specified in section 5103(c) (relating to variation by agreement or undertaking).

(d) Conflict with certain other divisions.—If there is conflict between this division and Division 3 (relating to negotiable instruments), 4 (relating to bank deposits and collections), 4A (relating to funds transfers) or 9 (relating to secured transactions), this division governs.

(e) Forum.—The forum for settling disputes arising out of an undertaking within this division may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

§ 5117. Subrogation of issuer, applicant and nominated person.

(a) Subrogation rights of issuer.—An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) Subrogation rights of applicant.—An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary,

presenter or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a).

(c) Subrogation rights of nominated person.—A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Time at which subrogation rights arise.—Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense or excuse.

§ 5118. Security interest of issuer or nominated person.

(a) General rule.—An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) Duration.—So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Division 9 (relating to secured transactions), but:

(1) a security agreement is not necessary to make the security interest enforceable under section 9203(b)(3) (relating to attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites);

(2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

Section 14. Sections 7503(a)(1), 8102(a) introductory paragraph, 8103(f), 8106(d) and (f), 8110(e), 8301(a)(3), 8302(a) and 8510 of Title 13 are amended to read:

§ 7503. Document of title to goods defeated in certain cases.

(a) Prior legal or perfected security interest.—A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

- (1) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this division (section 7403 (relating to obligation of warehouseman or carrier to deliver; excuse)) or with power of disposition under this title (section 2403 (relating to power to transfer; good faith purchase of goods; “entrusting”) and section [9307] 9320 (relating to [protection of buyers] *buyer* of goods)) or other statute or rule of law; nor

§ 8102. 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:

§ 8103. Rules for determining whether certain obligations and interests are securities or financial assets.

(f) Commodity contract.—A commodity contract, as defined in section [9115 (relating to investment property)] 9102(a) (relating to definitions and index of definitions), is not a security or a financial asset.

§ 8106. Control.

(d) “Control” of security entitlement.—A purchaser has “control” of a security entitlement if:

- (1) the purchaser becomes the entitlement holder; [or]
- (2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder[.]; or
- (3) *another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.*

(f) Purchaser under subsection (c)[(2)] or (d)[(2)].—A purchaser who has satisfied the requirements of subsection (c)[(2)] or (d)[(2)] has control even if the registered owner in the case of subsection (c)[(2)] or the entitlement holder in the case of subsection (d)[(2)] retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities

intermediary or otherwise to deal with the uncertificated security or security entitlement.

* * *

§ 8110. Applicability; choice of law.

* * *

(e) Determination of “securities intermediary’s jurisdiction”.—The following rules determine a “securities intermediary’s jurisdiction” for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder **[specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.**

(2) *If governing the securities account expressly provides that a particular jurisdiction is the securities intermediary’s jurisdiction for purposes of this chapter, this division or this title, that jurisdiction is the securities intermediary’s jurisdiction.*

(2) *If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.*

(3) *If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder [does not specify the governing law as provided in paragraph (1), but expressly specifies] governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.*

[(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2)] (4) *If none of the preceding paragraphs applies, the securities intermediary’s jurisdiction is the jurisdiction in which [is located] the office identified in an account statement as the office serving the entitlement holder’s account is located.*

[(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement does not identify an office serving the entitlement holder’s account as provided in paragraph (3)] (5) *If none of the preceding paragraphs applies, the securities intermediary’s jurisdiction is the jurisdiction in which [is located] the chief executive office of the securities intermediary is located.*

* * *

§ 8301. Delivery.

(a) Delivery of certificated security.—Delivery of a certificated security to a purchaser occurs when:

(3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and **[has been specially indorsed to the purchaser by an effective indorsement.]** is:

- (i) *registered in the name of the purchaser;*
- (ii) *payable to the order of the purchaser; or*
- (iii) *specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.*

§ 8302. Rights of purchaser.

(a) Rights acquired by purchaser.—Except as otherwise provided in subsections (b) and (c), **[upon delivery] a purchaser** of a certificated or uncertificated security **[to a purchaser, the purchaser]** acquires all rights in the security that the transferor had or had power to transfer.

§ 8510. Rights of purchaser of security entitlement from entitlement holder.

(a) Action based on adverse claim to financial asset or security entitlement.—**[An] In a case not covered by the priority rules in Division 9 (relating to secured transactions) or the rules stated in subsection (c), an** action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim and obtains control.

(b) When adverse claim cannot be asserted.—If an adverse claim could not have been asserted against an entitlement holder under section 8502 (relating to assertion of adverse claim against entitlement holder), the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) Rules of priority.—In a case not covered by the priority rules in Division 9 **[(relating to secured transactions; sales of accounts, contract rights and chattel paper)]**, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. **[Purchasers] Except as otherwise provided in subsection (d), purchasers** who have control rank **[equally, except that a] according to priority in time of:**

- (1) *the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained if*

the purchaser obtained control under section 8106(d)(1) (relating to control);

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried if the purchaser obtained control under section 8106(d)(2); or

(3) if the purchaser obtained control through another person under section 8106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) Securities intermediary.—A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Section 15. Division 9 of Title 13 is repealed.

Section 16. Title 13 is amended by adding a division to read:

DIVISION 9
SECURED TRANSACTIONS

CHAPTER 91
GENERAL PROVISIONS

Subchapter

- A. Short Title, Definitions and General Concepts
- B. Applicability of Division

SUBCHAPTER A
SHORT TITLE, DEFINITIONS AND GENERAL CONCEPTS

Sec.

- 9101. Short title of division.
- 9102. Definitions and index of definitions.
- 9103. Purchase-money security interest; application of payments; burden of establishing.
- 9104. Control of deposit account.
- 9105. Control of electronic chattel paper.
- 9106. Control of investment property.
- 9107. Control of letter-of-credit right.
- 9108. Sufficiency of description.

§ 9101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Division 9, Secured Transactions.

§ 9102. Definitions and index of definitions.

(a) Division 9 definitions.—The following words and phrases when used in this division shall have the meanings given to them in this subsection:

“Accession.” Goods which are physically united with other goods in such a manner that the identity of the original goods is not lost.

“Account.”

(1) Except as used in “account for,” a right to payment of a monetary obligation, whether or not earned by performance:

(i) for property which has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person licensed or authorized to operate the game by a state or governmental unit of a state.

(2) The term includes health-care-insurance receivables.

(3) The term does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) investment property;

(v) letter-of-credit right or letters of credit; or

(vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

“Account debtor.” A person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument even if the instrument constitutes part of chattel paper.

“Accounting.” Except as used in “accounting for,” a record:

(1) authenticated by a secured party;

(2) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(3) identifying the components of the obligations in reasonable detail.

“Agricultural lien.” An interest, other than a security interest, in farm products:

(1) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor’s farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(2) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(3) whose effectiveness does not depend on the person's possession of the personal property.

"As-extracted collateral." Any of the following:

(1) Oil, gas or other minerals which are subject to a security interest which:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted.

(2) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

"Authenticate." To:

(i) sign; or

(ii) execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

"Bank." An organization which is engaged in the business of banking. The term includes any savings bank, savings and loan association, credit union or trust company.

"Cash proceeds." Proceeds which are money, checks, deposit accounts or the like.

"Certificate of title." A certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

"Chattel paper." A record or records which evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this definition, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel or records which evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a

transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

“Collateral.” The property subject to a security interest or agricultural lien. The term includes:

- (1) proceeds to which a security interest attaches;
- (2) accounts, chattel paper, payment intangibles and promissory notes which have been sold; and
- (3) goods which are the subject of a consignment.

“Commercial tort claim.” A claim arising in tort with respect to which:

- (1) the claimant is an organization; or
- (2) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant’s business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

“Commodity account.” An account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

“Commodity contract.” A commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

- (1) traded on or subject to the rules of a board of trade which has been designated as a contract market for such a contract pursuant to Federal commodities laws; or
- (2) traded on a foreign commodity board of trade, exchange or market and carried on the books of a commodity intermediary for a commodity customer.

“Commodity customer.” A person for whom or which a commodity intermediary carries a commodity contract on its books.

“Commodity intermediary.” A person that:

- (1) is registered as a futures commission merchant under Federal commodities law; or
- (2) in the ordinary course of its business provides clearance or settlement services for a board of trade which has been designated as a contract market pursuant to Federal commodities law.

“Communicate.” Any of the following:

- (1) To send a written or other tangible record.
- (2) To transmit a record by any means agreed upon by the persons sending and receiving the record.
- (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

“Consignee.” A merchant to whom or which goods are delivered in a consignment.

“Consignment.” A transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and all of the following apply:

(1) The merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others.

(2) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery.

(3) The goods are not consumer goods immediately before delivery.

(4) The transaction does not create a security interest which secures an obligation.

“Consignor.” A person that delivers goods to a consignee in a consignment.

“Consumer debtor.” A debtor in a consumer transaction.

“Consumer goods.” Goods which are used or bought for use primarily for personal, family or household purposes.

“Consumer-goods transaction.” A consumer transaction in which:

(1) an individual incurs an obligation primarily for personal, family or household purposes; and

(2) a security interest in consumer goods secures the obligation.

“Consumer obligor.” An obligor who:

(1) is an individual; and

(2) incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

“Consumer transaction.” A transaction in which:

(1) an individual incurs an obligation primarily for personal, family or household purposes;

(2) a security interest secures the obligation; and

(3) the collateral is held or acquired primarily for personal, family or household purposes.

The term includes consumer-goods transactions.

“Continuation statement.” An amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

“Debtor.” A:

(1) person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(2) seller of accounts, chattel paper, payment intangibles or promissory notes; or

(3) consignee.

“Deposit account.” A demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

“Document.” A document of title or a receipt of the type described in section 7201(b) (relating to storage under government bond).

“Electronic chattel paper.” Chattel paper evidenced by a record consisting of information stored in an electronic medium.

“Encumbrance.” A right, other than an ownership interest, in real property. The term includes a mortgage and any other lien on real property.

“Equipment.” Goods other than inventory, farm products or consumer goods.

“Farm products.” Goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

- (1) Crops grown, growing or to be grown, including:
 - (i) crops produced on trees, vines and bushes; and
 - (ii) aquatic goods produced in aquacultural operations.
- (2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.
- (3) Supplies used or produced in a farming operation.
- (4) Products of crops or livestock in their unmanufactured states.

“Farming operation.” Raising, cultivating, propagating, fattening or grazing or any other farming, livestock or aquacultural operation.

“File number.” The number assigned to an initial financing statement pursuant to section 9519(a) (relating to filing office duties).

“Filing office.” An office designated in section 9501 (relating to filing office) as the place to file a financing statement.

“Filing-office rule.” A rule adopted pursuant to section 9526 (relating to filing-office rules).

“Financing statement.” A record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

“Fixture filing.” The filing of a financing statement:

- (1) covering goods which are, or are to become, fixtures; and
- (2) satisfying section 9502(a) (relating to sufficiency of financing statement) and (b) (relating to real-property-related financing statements).

The term includes the filing of a financing statement covering goods of a transmitting utility which are, or are to become, fixtures.

“Fixtures.” Goods which have become so related to particular real property that an interest in them arises under real property law.

“General intangible.” Any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights,

letters of credit, money and oil, gas or other minerals before extraction. The term includes payment intangibles and software.

“Good faith.” Honesty in fact and the observance of reasonable commercial standards of fair dealing.

“Goods.” All things which are movable when a security interest attaches.

(1) The term includes all of the following:

(i) Fixtures.

(ii) Standing timber which is to be cut and removed under a conveyance or contract for sale.

(iii) The unborn young of animals.

(iv) Crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes.

(v) Manufactured homes.

(vi) A computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

The term does not include a computer program embedded in goods which consist solely of the medium in which the program is embedded.

(2) The term does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money or oil, gas or other minerals before extraction.

“Governmental unit.” A subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

“Health-care-insurance receivable.” An interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

“Instrument.” A negotiable instrument or any other writing which evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease and is of a type which in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

(1) investment property;

(2) letters of credit; or

(3) writings which evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

“Inventory.” Goods, other than farm products, which:

- (1) are leased by a person as lessor;
- (2) are held by a person for sale or lease or to be furnished under a contract of service;
- (3) are furnished by a person under a contract of service; or
- (4) consist of raw materials, work in process or materials used or consumed in a business.

“Investment property.” A security whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

“Jurisdiction of organization.” With respect to a registered organization, the jurisdiction under whose law the organization is organized.

“Letter-of-credit right.” A right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

“Lien creditor.” Any of the following:

- (1) A creditor that has acquired a lien on the property involved by attachment, levy or the like.
- (2) An assignee for benefit of creditors from the time of assignment.
- (3) A trustee in bankruptcy from the date of the filing of the petition.
- (4) A receiver in equity from the time of appointment.

“Manufactured home.” A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. (relating to public health and welfare).

“Manufactured-home transaction.” A secured transaction:

- (1) which creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory;
or
- (2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

“Mortgage.” A consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

“New debtor.” A person that becomes bound as debtor under section 9203(d) (relating to when person becomes bound by another person’s security agreement) by a security agreement previously entered into by another person.

“New value.” Any of the following:

- (1) Money.
- (2) Money’s worth in property, services or new credit.
- (3) Release by a transferee of an interest in property previously transferred to the transferee.

The term does not include an obligation substituted for another obligation.

“Noncash proceeds.” Proceeds other than cash proceeds.

“Obligor.” A person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

- (1) owes payment or other performance of the obligation;
- (2) has provided property other than the collateral to secure payment or other performance of the obligation; or
- (3) is otherwise accountable in whole or in part for payment or other performance of the obligation.

The term does not include any issuer or nominated person under a letter of credit.

“Original debtor.” Except as used in section 9310(c) (relating to assignment of perfected security interest), a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9203(d) (relating to when person becomes bound by another person’s security agreement).

“Payment intangible.” A general intangible under which the account debtor’s principal obligation is a monetary obligation.

“Person related to.” One of the following:

- (1) With respect to an individual:
 - (i) the spouse of the individual;
 - (ii) a brother, brother-in-law, sister or sister-in-law of the individual;
 - (iii) an ancestor or lineal descendant of the individual or the individual’s spouse; or
 - (iv) any other relative, by blood or marriage, of the individual or the individual’s spouse, who shares the same home with the individual.
- (2) With respect to an organization:
 - (i) a person directly or indirectly controlling, controlled by or under common control with the organization;
 - (ii) an officer or director of or a person performing similar functions with respect to the organization;

(iii) an officer or director of or a person performing similar functions with respect to a person described in subparagraph (i);

(iv) the spouse of an individual described in subparagraph (i), (ii) or (iii); or

(v) an individual related by blood or marriage to an individual described in subparagraph (i), (ii), (iii) or (iv) who shares the same home with the individual.

“Proceeds.” Except as used in section 9609(b) (relating to secured party’s right to take possession after default), the following property:

(1) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral.

(2) Whatever is collected on or distributed on account of collateral.

(3) Rights arising out of collateral.

(4) To the extent of the value of collateral, claims arising out of:

(i) loss of the collateral;

(ii) nonconformity of the collateral;

(iii) interference with the use of the collateral;

(iv) defects in the collateral;

(v) infringement of rights in the collateral; or

(vi) damage to the collateral.

(5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of:

(i) loss of the collateral;

(ii) nonconformity of the collateral;

(iii) defects in the collateral;

(iv) infringement of rights in the collateral; or

(v) damage to the collateral.

“Promissory note.” An instrument which:

(1) evidences a promise to pay a monetary obligation;

(2) does not evidence an order to pay; and

(3) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

“Proposal.” A record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures under sections 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral), 9621 (relating to notification of proposal to accept collateral) and 9622 (relating to effect of acceptance of collateral).

“Public-finance transaction.” A secured transaction in connection with which all of the following apply:

(1) Debt securities are issued.

(2) All or a portion of the securities issued have an initial stated maturity of at least 20 years.

(3) Any of the following is a state or a governmental unit of a state:

- (i) The debtor.
- (ii) The obligor.
- (iii) The secured party.
- (iv) The account debtor or other person obligated on collateral.
- (v) The assignor or assignee of a secured obligation.
- (vi) The assignor or assignee of a security interest.

“Pursuant to commitment.” With respect to an advance made or other value given by a secured party, pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

“Record.” Except as used in “for record,” “of record,” “record or legal title” or “record owner,” either of the following:

- (1) Information which is inscribed on a tangible medium.
- (2) Information which is:
 - (i) stored in an electronic or other medium; and
 - (ii) retrievable in perceivable form.

“Registered organization.” An organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

“Secondary obligor.” An obligor to the extent that:

- (1) the obligor’s obligation is secondary; or
- (2) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor or another obligor or property of either.

“Secured party.” Any of the following:

(1) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.

(2) A person that holds an agricultural lien.

(3) A consignor.

(4) A person to whom or which accounts, chattel paper, payment intangibles or promissory notes have been sold.

(5) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for.

(6) A person that holds a security interest arising under section 2401 (relating to passing of title; reservation for security; limited application of section), 2505 (relating to shipment by seller under reservation), 2711(c) (relating to security interest of buyer in rejected goods), 2A508(e) (relating to security interest in goods in lessee’s possession), 4210 (relating to security interest of collecting bank in items, accompanying documents and proceeds) or 5118 (relating to security interest of issuer or nominated person).

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

“Send.” In connection with a record or notification:

(1) to deposit in the mail, deliver for transmission or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(2) to cause the record or notification to be received within the time which it would have been received if properly sent under paragraph (1).

“Software.” A computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program which is included in the definition of goods.

“State.” A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

“Supporting obligation.” A letter-of-credit right or secondary obligation which supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

“Tangible chattel paper.” Chattel paper evidenced by a record or records consisting of information which is inscribed on a tangible medium.

“Termination statement.” An amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

“Transmitting utility.” A person primarily engaged in the business of:

(1) operating a railroad, subway, street railway or trolley bus;

(2) transmitting communications electrically, electromagnetically or by light;

(3) transmitting goods by pipeline or sewer; or

(4) transmitting or producing and transmitting electricity, steam, gas or water.

(b) Definitions in other divisions.—The following definitions in other divisions apply to this division:

“Applicant.” Section 5102.

“Beneficiary.” Section 5102.

“Broker.” Section 8102.

“Certificated security.” Section 8102.

“Check.” Section 3104.

“Clearing corporation.” Section 8102.

“Contract for sale.” Section 2106.

“Customer.” Section 4104.

“Entitlement holder.” Section 8102.

“Financial asset.” Section 8102.

“Holder in due course.” Section 3302.

“Issuer.” With respect to a letter of credit or letter-of-credit right, section 5102.

“Issuer.” With respect to a security, section 8201.

“Lease.” Section 2A103.

“Lease agreement.” Section 2A103.

“Lease contract.” Section 2A103.

“Leasehold interest.” Section 2A103.

“Lessee.” Section 2A103.

“Lessee in ordinary course of business.” Section 2A103.

“Lessor.” Section 2A103.

“Lessor’s residual interest.” Section 2A103.

“Letter of credit.” Section 5102.

“Merchant.” Section 2104.

“Negotiable instrument.” Section 3104.

“Nominated person.” Section 5102.

“Note.” Section 3104.

“Proceeds of a letter of credit.” Section 5114.

“Prove.” Section 3103.

“Sale.” Section 2106.

“Securities account.” Section 8501.

“Securities intermediary.” Section 8102.

“Security.” Section 8102.

“Security certificate.” Section 8102.

“Security entitlement.” Section 8102.

“Uncertificated security.” Section 8102.

(c) Division 1 definitions and principles.—Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 9103. Purchase-money security interest; application of payments; burden of establishing.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Purchase-money collateral.” Goods or software which secures a purchase-money obligation incurred with respect to that collateral.

“Purchase-money obligation.” An obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods.—A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory which is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software.—A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor's inventory purchase-money security interest.—The security interest of a consignor in goods which are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in nonconsumer-goods transaction.—In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(i) to obligations which are not secured; and

(ii) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in nonconsumer-goods transaction.—In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such even if:

(1) the purchase-money collateral also secures an obligation which is not a purchase-money obligation;

(2) collateral which is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated or restructured.

(g) Burden of proof in nonconsumer-goods transaction.—In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Nonconsumer-goods transactions; no inference.—The limitation of the rules in subsections (e), (f) and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

§ 9104. Control of deposit account.

(a) Requirements for control.—A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with respect to the deposit account.

(b) Debtor's right to direct disposition.—A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

§ 9105. Control of electronic chattel paper.

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5) and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or revisions which add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy which is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

§ 9106. Control of investment property.

(a) Control under section 8106.—A person has control of a certificated security, an uncertificated security or a security entitlement as provided in section 8106 (relating to control).

(b) Control of commodity contract.—A secured party has control of a commodity contract if:

(1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account.—A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

§ 9107. Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 5114(c) (relating to recognition of assignment of proceeds) or otherwise applicable law or practice.

§ 9108. Sufficiency of description.

(a) Sufficiency of description.—Except as otherwise provided in subsections (c), (d) and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification.—Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;

(2) category;

(3) except as otherwise provided in subsection (e), a type of collateral defined in this title;

(4) quantity;

(5) computational or allocational formula or procedure; or

(6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient.—A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(d) Investment property.—Except as otherwise provided in subsection (e), a description of a security entitlement, securities account or commodity account is sufficient if it describes:

(1) the collateral by those terms or as investment property; or

(2) the underlying financial asset or commodity contract.

(e) When description by type insufficient.—A description only by type of collateral defined in this title is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a securities account or a commodity account.

SUBCHAPTER B APPLICABILITY OF DIVISION

Sec.

9109. Scope.

9110. Security interests arising under Division 2 or 2A.

§ 9109. Scope.

(a) General scope of division.—Except as otherwise provided in subsections (c) and (d), this division applies to:

(1) a transaction, regardless of its form, which creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) a consignment;

(5) a security interest arising under section 2401 (relating to passing of title; reservation for security; limited application of section), 2505 (relating to shipment by seller under reservation), 2711(c) (relating to security interest of buyer in rejected goods) or 2A508(e) (relating to security interest in goods in lessee's possession), as provided in section 9110 (relating to security interests arising under Division 2 or 2A); and

(6) a security interest arising under section 4210 (relating to security interest of collecting bank in items, accompanying documents and proceeds) or 5118 (relating to security interest of issuer or nominated person).

(b) Security interest in secured obligation.—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.

(c) Extent to which division does not apply.—This division does not apply to the extent that:

(1) a statute, regulation or treaty of the United States preempts this division;

(2) another statute of this Commonwealth expressly governs the creation, perfection, priority or enforcement of a security interest created by the Commonwealth or a governmental unit of the Commonwealth;

(3) a statute of another state, a foreign country or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection,

priority or enforcement of a security interest created by the state, country or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5114 (relating to assignment of proceeds).

(d) Inapplicability of division.—This division does not apply to any of the following:

(1) A landlord's lien other than an agricultural lien.

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials. Section 9333 (relating to priority of certain liens arising by operation of law) applies with respect to priority of the lien.

(3) An assignment of a claim for wages, salary or other compensation of an employee.

(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose.

(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only.

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness.

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment. Sections 9315 (relating to secured party's rights on disposition of collateral and in proceeds) and 9322 (relating to priorities among conflicting security interests in and agricultural liens on same collateral) apply with respect to proceeds and priorities in proceeds.

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment which was collateral.

(10) A right of recoupment or set-off. However:

(i) section 9340 (relating to effectiveness of right of recoupment or set-off against deposit account) applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(ii) section 9404 (relating to rights acquired by assignee; claims and defenses against assignee) applies with respect to defenses or claims of an account debtor.

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(i) liens on real property in sections 9203 (relating to attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites) and 9308 (relating to when security interest or agricultural lien is perfected; continuity of perfection);

(ii) fixtures in section 9334 (relating to priority of security interests in fixtures and crops);

(iii) fixture filings in sections 9501 (relating to filing office), 9502 (relating to contents of financing statement; record of mortgage as financing statement; time of filing financing statement), 9512 (relating to amendment of financing statement), 9516 (relating to what constitutes filing; effectiveness of filing) and 9519 (relating to numbering, maintaining and indexing records; communicating information provided in records); and

(iv) security agreements covering personal and real property in section 9604 (relating to procedure if security agreement covers real property or fixtures).

(12) An assignment of a claim arising in tort, other than a commercial tort claim. Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(13) An assignment of a deposit account in a consumer transaction. Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(14) A security interest in intangible transition property, as defined in 66 Pa.C.S. § 2812(g) (relating to approval of transition bonds), to the extent that such security interest is governed by 66 Pa.C.S. § 2812 rather than by this title.

§ 9110. Security interests arising under Division 2 or 2A.

A security interest arising under section 2401 (relating to passing of title; reservation for security; limited application of section), 2505 (relating to shipment by seller under reservation), 2711(c) (relating to security interest of buyer in rejected goods) or 2A508(e) (relating to security interest in goods in lessee's possession) is subject to this division. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if section 9203(b)(3) (relating to enforceability) has not been satisfied;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party after default by the debtor are governed by Division 2 (relating to sales) or 2A (relating to leases); and

(4) the security interest has priority over a conflicting security interest created by the debtor.

CHAPTER 92

EFFECTIVENESS OF SECURITY AGREEMENT,
ATTACHMENT OF SECURITY INTEREST AND
RIGHTS OF PARTIES TO SECURITY AGREEMENT

Subchapter**A. Effectiveness and Attachment****B. Rights and Duties****SUBCHAPTER A
EFFECTIVENESS AND ATTACHMENT****Sec.****9201. General effectiveness of security agreement.****9202. Title to collateral immaterial.****9203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.****9204. After-acquired property; future advances.****9205. Use or disposition of collateral permissible.****9206. Security interest arising in purchase or delivery of financial asset.****§ 9201. General effectiveness of security agreement.**

(a) General effectiveness.—Except as otherwise provided in this title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors.

(b) Applicable consumer laws and other law.—A transaction subject to this division is subject to:

(1) any applicable rule of law which establishes a different rule for consumers;

(2) any other statute or regulation of the Commonwealth which regulates the rates, charges, agreements and practices for loans, credit sales or other extensions of credit; and

(3) any consumer protection statute or regulation of the Commonwealth.

(c) Other applicable law controls.—In case of conflict between this division and a rule of law, statute or regulation described in subsection (b), the rule of law, statute or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law.—This division does not:

(1) validate any rate, charge, agreement or practice which violates a rule of law, statute or regulation described in subsection (b); or

(2) extend the application of the rule of law, statute or regulation to a transaction not otherwise subject to it.

§ 9202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles or promissory notes, the provisions of this division with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

§ 9203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) Attachment.—A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral unless an agreement expressly postpones the time of attachment.

(b) Enforceability.—Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if all of the following apply:

(1) Value has been given.

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(3) One of the following conditions is met:

(i) The debtor has authenticated a security agreement which provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned.

(ii) The collateral is not a certificated security and is in the possession of the secured party under section 9313 (relating to when possession by or delivery to secured party perfects security interest without filing) pursuant to the debtor's security agreement.

(iii) The collateral is a certificated security in registered form, and the security certificate has been delivered to the secured party under section 8301 (relating to delivery) pursuant to the debtor's security agreement.

(iv) The collateral is deposit accounts, electronic chattel paper, investment property or letter-of-credit rights, and the secured party has control under section 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right) pursuant to the debtor's security agreement.

(c) Other Title 13 provisions.—Subsection (b) is subject to sections 4210 (relating to security interest of collecting bank in items, accompanying documents and proceeds), 5118 (relating to security interest of issuer or nominated person), 9110 (relating to security interests arising under Division 2 or 2A) and 9206 (relating to security interest arising in purchase or delivery of financial asset).

(d) When person becomes bound by another person's security agreement.—A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this division or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound.—If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations.—The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9315 (relating to secured party's rights on disposition of collateral and in proceeds) and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment.—The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) Security entitlement carried in securities account.—The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account.—The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

§ 9204. After-acquired property; future advances.

(a) After-acquired collateral.—Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective.—A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) a commercial tort claim.

(c) Future advances and other value.—A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

§ 9205. Use or disposition of collateral permissible.

(a) When security interest not invalid or fraudulent.—A security interest is not invalid or fraudulent against creditors solely because any of the following apply:

(1) The debtor has the right or ability to:

(i) use, commingle or dispose of all or part of the collateral, including returned or repossessed goods;

(ii) collect, compromise, enforce or otherwise deal with collateral;

(iii) accept the return of collateral or make repossessions; or

(iv) use, commingle or dispose of proceeds.

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed.—This section does not relax the requirements of possession if attachment, perfection or enforcement of a security interest depends upon possession of the collateral by the secured party.

§ 9206. Security interest arising in purchase or delivery of financial asset.

(a) Security interest when person buys through securities intermediary.—A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset.—The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction.—A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if all of the following apply:

(1) The security or other financial asset:

(i) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(ii) is delivered under an agreement between persons in the business of dealing with such securities or financial assets.

(2) The agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery.—The security interest described in subsection (c) secures the obligation to make payment for the delivery.

SUBCHAPTER B RIGHTS AND DUTIES

Sec.

9207. Rights and duties of secured party having possession or control of collateral.

9208. Additional duties of secured party having control of collateral.

9209. Duties of secured party if account debtor has been notified of assignment.

9210. Request for accounting; request regarding list of collateral or statement of account.

§ 9207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession.—Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties and rights when secured party in possession.—Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral.

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage.

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

(4) The secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control.—Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right):

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) Buyer of certain rights to payment.—If the secured party is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(i) to charge back uncollected collateral; or

(ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

(2) Subsections (b) and (c) do not apply.

§ 9208. Additional duties of secured party having control of collateral.

(a) Applicability of section.—This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations or otherwise give value.

(b) Duties of secured party after receiving demand from debtor.—Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 9104(a)(2) (relating to control of deposit account) shall send to the bank with which the deposit account is maintained an authenticated statement which releases the bank from any further obligation to comply with instructions originated by the secured party.

(2) A secured party having control of a deposit account under section 9104(a)(3) shall:

(i) pay the debtor the balance on deposit in the deposit account; or

(ii) transfer the balance on deposit into a deposit account in the debtor's name.

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 9105 (relating to control of electronic chattel paper) shall:

(i) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(ii) if the debtor designates a custodian that is the designated custodian with whom or which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(iii) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

(4) A secured party having control of investment property under section 8106(d)(2) (relating to control of security entitlement) or 9106(b) (relating to control of commodity contract) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record

which releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.

(5) A secured party having control of a letter-of-credit right under section 9107 (relating to control of letter-of-credit right) shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

§ 9209. Duties of secured party if account debtor has been notified of assignment.

(a) Applicability of section.—Except as otherwise provided in subsection (c), this section applies if:

(1) there is no outstanding secured obligation; and

(2) the secured party is not committed to make advances, incur obligations or otherwise give value.

(b) Duties of secured party after receiving demand from debtor.—Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 9406(a) (relating to discharge of account debtor; effect of notification) an authenticated record which releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales.—This section does not apply to an assignment constituting the sale of an account, chattel paper or payment intangible.

§ 9210. Request for accounting; request regarding list of collateral or statement of account.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Request.” A:

(1) request for an accounting;

(2) request regarding a list of collateral; or

(3) request regarding a statement of account.

“Request for an accounting.” A record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship which is the subject of the request.

“Request regarding a list of collateral.” A record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship which is the subject of the request.

“Request regarding a statement of account.” A record authenticated by a debtor requesting that the recipient approve or correct a statement

indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship which is the subject of the request.

(b) **Duty to respond to requests.**—Subject to subsections (c), (d), (e) and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) **Request regarding list of collateral; statement concerning type of collateral.**—A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) **Request regarding list of collateral; no interest claimed.**—A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) **Request for accounting or regarding statement of account; no interest in obligation claimed.**—A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) **Charges for responses.**—A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

Subchapter

- A. Law Governing Perfection and Priority
- B. Perfection
- C. Priority
- D. Rights of Bank

**SUBCHAPTER A
LAW GOVERNING PERFECTION AND PRIORITY**

Sec.

- 9301. Law governing perfection and priority of security interests.
- 9302. Law governing perfection and priority of agricultural liens.
- 9303. Law governing perfection and priority of security interests in goods covered by certificate of title.
- 9304. Law governing perfection and priority of security interests in deposit accounts.
- 9305. Law governing perfection and priority of security interests in investment property.
- 9306. Law governing perfection and priority of security interests in letter-of-credit rights.
- 9307. Location of debtor.

§ 9301. Law governing perfection and priority of security interests.

(a) General rule; location of debtor.—Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in collateral.

(b) Possessory security interests; location of collateral.—While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a possessory security interest in that collateral.

(c) Fixture filings, timber to be cut, priority of nonpossessory tangible personal property security interests; location of collateral.—Except as otherwise provided in subsection (d), while collateral is located in a jurisdiction, the local law of that jurisdiction governs:

- (1) perfection of a security interest in goods by filing a fixture filing;
- (2) perfection of a security interest in timber to be cut; and
- (3) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in negotiable documents, goods, instruments, money or tangible chattel paper.

(d) As-extracted collateral; location of wellhead or minehead.—The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection and the priority of a security interest in as-extracted collateral.

(e) Other exceptions.—The rules of this section are subject to:

(1) Section 9303 (relating to law governing perfection and priority of security interests in goods covered by certificate of title).

(2) Section 9304 (relating to law governing perfection and priority of security interests in deposit accounts).

(3) Section 9305 (relating to law governing perfection and priority of security interests in investment property).

(4) Section 9306 (relating to law governing perfection and priority of security interests in letter-of-credit rights).

§ 9302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of an agricultural lien on the farm products.

§ 9303. Law governing perfection and priority of security interests in goods covered by certificate of title.

(a) Applicability of section.—This section applies to goods covered by a certificate of title even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title.—Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law.—The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

§ 9304. Law governing perfection and priority of security interests in deposit accounts.

(a) Law of bank's jurisdiction governs.—The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction.—The following rules determine a bank's jurisdiction for purposes of this chapter:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this chapter, this division or this title, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

§ 9305. Law governing perfection and priority of security interests in investment property.

(a) Governing law; general rules.—Except as otherwise provided in subsection (c), the following rules apply:

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

(2) The local law of the issuer's jurisdiction as specified in section 8110(d) (relating to applicability; choice of law) governs perfection, the effect of perfection or nonperfection and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in section 8110(e) governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a security entitlement or securities account.

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

(b) Commodity intermediary's jurisdiction.—The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this chapter, this division or this title, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by

the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

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

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

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

(c) When perfection governed by law of jurisdiction where debtor located.—The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

§ 9306. Law governing perfection and priority of security interests in letter-of-credit rights.

(a) Governing law; issuer's or nominated person's jurisdiction.—Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction.—For purposes of this chapter, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 5116 (relating to choice of law and forum).

(c) When section not applicable.—This section does not apply to a security interest which is perfected only under section 9308(d) (relating to supporting obligation).

§ 9307. Location of debtor.

(a) Place of business.—As used in this section, the term "place of business" means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules.—Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor which is an organization and has only one place of business is located at its place of business.

(3) A debtor which is an organization and has more than one place of business is located at its chief executive office.

(c) *Limitation of applicability of subsection (b).*—Subsection (b) applies only if a debtor's residence, place of business or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) *Continuation of location: cessation of existence, etc.*—A person that ceases to exist, ceases to have a residence or ceases to have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) *Location of registered organization organized under state law.*—A registered organization which is organized under the law of a state is located in that state.

(f) *Location of registered organization organized under Federal law; bank branches and agencies.*—Except as otherwise provided in subsection (i), a registered organization which is organized under the law of the United States and a branch or agency of a bank which is not organized under the law of the United States or a state are located:

(1) in the state which the law of the United States designates, if the law designates a state of location;

(2) in the state which the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch or agency to designate its state of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) *Continuation of location: change in status of registered organization.*—A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up or cancellation of the existence of the registered organization.

(h) *Location of United States.*—The location of the United States is the District of Columbia.

(i) *Location of foreign bank branch or agency if licensed in only one state.*—A branch or agency of a bank which is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier.—A foreign air carrier under the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this chapter.—This section applies only for purposes of this chapter.

SUBCHAPTER B PERFECTION

Sec.

9308. When security interest or agricultural lien is perfected; continuity of perfection.

9309. Security interest perfected upon attachment.

9310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

9311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

9312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

9313. When possession by or delivery to secured party perfects security interest without filing.

9314. Perfection by control.

9315. Secured party's rights on disposition of collateral and in proceeds.

9316. Continued perfection of security interest following change in governing law.

§ 9308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Perfection of security interest.—Except as otherwise provided in this section and section 9309 (relating to security interest perfected upon attachment), a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 9310 (relating to when filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply) through 9316 (relating to continued perfection of security interest following change in governing law) have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien.—An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 9310 have been satisfied. An agricultural lien is perfected when it

becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods.—A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this division and is later perfected by another method under this division without an intermediate period when it was unperfected.

(d) Supporting obligation.—Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment.—Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account.—Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account.—Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

§ 9309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in section 9311(b) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties) with respect to consumer goods which are subject to a statute or treaty described in section 9311(a).

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles.

(3) A sale of a payment intangible.

(4) A sale of a promissory note.

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services.

(6) A security interest arising under section 2401 (relating to passing of title; reservation for security; limited application of section), 2505 (relating to shipment by seller under reservation), 2711(c) (relating to security interest of buyer in rejected goods) or 2A508(e) (relating to security interest in goods in lessee's possession) until the debtor obtains possession of the collateral.

(7) A security interest of a collecting bank arising under section 4210 (relating to security interest of collecting bank in items, accompanying documents and proceeds).

(8) A security interest of an issuer or nominated person arising under section 5118 (relating to security interest of issuer or nominated person).

(9) A security interest arising in the delivery of a financial asset under section 9206(c) (relating to security interest in payment against delivery transaction).

(10) A security interest in investment property created by a broker or securities intermediary.

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary.

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

§ 9310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) General rule: perfection by filing.—Except as otherwise provided in subsection (b) and section 9312(b) (relating to control or possession of certain collateral), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: filing not necessary.—The filing of a financing statement is not necessary to perfect a security interest:

(1) which is perfected under section:

(i) 9308(d) (relating to supporting obligation);

(ii) 9308(e) (relating to lien securing right to payment);

(iii) 9308(f) (relating to security entitlement carried in securities account); or

(iv) 9308(g) (relating to commodity contract carried in commodity account);

(2) which is perfected under section 9309 (relating to security interest perfected upon attachment) when it attaches;

(3) in property subject to a statute, regulation or treaty described in section 9311(a) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties);

(4) in goods in possession of a bailee which is perfected under section 9312(d)(1) or (2) (relating to goods covered by nonnegotiable document);

(5) in certificated securities, documents, goods or instruments which is perfected without filing or possession under section:

(i) 9312(e) (relating to temporary perfection: new value);

(ii) 9312(f) (relating to temporary perfection: goods or documents made available to debtor); or

(iii) 9312(g) (relating to temporary perfection: delivery of security certificate or instrument to debtor);

(6) in collateral in the secured party's possession under section 9313 (relating to when possession by or delivery to secured party perfects security interest without filing);

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under section 9313;

(8) in deposit accounts, electronic chattel paper, investment property or letter-of-credit rights which is perfected by control under section 9314 (relating to perfection by control);

(9) in proceeds which is perfected under section 9315 (relating to secured party's rights on disposition of collateral and in proceeds); or

(10) which is perfected under section 9316 (relating to continued perfection of security interest following change in governing law).

(c) Assignment of perfected security interest.—If a secured party assigns a perfected security interest or agricultural lien, a filing under this division is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§ 9311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

(a) Security interest subject to other law.—Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9310(a) (relating to when filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply);

(2) a certificate-of-title statute of this Commonwealth or regulations promulgated thereunder, to the extent such statute or regulations provide for a security interest to be indicated on the certificate as a condition or result of perfection; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law.—Compliance with the requirements of a statute, regulation or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this division. Except as otherwise provided in subsection (d) and sections 9313 (relating to when possession by or delivery to secured party perfects security interest without filing) and 9316(d) and (e) (relating to continued perfection of security interest following change in governing law) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection.—Except as otherwise provided in subsection (d) and section 9316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection (a) are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this division.

(d) Inapplicability to certain inventory.—During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

§ 9312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Perfection by filing permitted.—A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Control or possession of certain collateral.—Except as otherwise provided in section 9315(c) (relating to perfection of security interest in proceeds) and (d) (relating to continuation of perfection) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under section 9314 (relating to perfection by control);

(2) except as otherwise provided in section 9308(d) (relating to supporting obligation), a security interest in a letter-of-credit right may be perfected only by control under section 9314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under section 9313 (relating to when possession by or delivery to secured party perfects security interest without filing).

(c) Goods covered by negotiable document.—While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest which becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document.—While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest;

or

(3) filing as to the goods.

(e) Temporary perfection: new value.—A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection: goods or documents made available to debtor.—A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor.—A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal or registration of transfer.

(h) Expiration of temporary perfection.—After the 20-day period specified in subsection (e), (f) or (g) expires, perfection depends upon compliance with this division.

§ 9313. When possession by or delivery to secured party perfects security interest without filing.

(a) Perfection by possession or delivery.—Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery under section 8301 (relating to delivery).

(b) Goods covered by certificate of title.—With respect to goods covered by a certificate of title issued by the Commonwealth, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9316(d) (relating to continued perfection of security interest following change in governing law).

(c) Collateral in possession of person other than debtor.—With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of

a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(1) the person in possession authenticates a record acknowledging that the person holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that the person will hold possession of the collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection.—If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection.—A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required.—A person in possession of collateral is not required to acknowledge that the person holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation.—If a person acknowledges that the person holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or section 8301(a) (relating to delivery of certificated security) even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this division otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor.—A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit;

or

(2) to redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation.—A secured party does not relinquish possession even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another

person unless the person otherwise agrees or law other than this division otherwise provides.

§ 9314. Perfection by control.

(a) Perfection by control.—A security interest in investment property, deposit accounts, letter-of-credit rights or electronic chattel paper may be perfected by control of the collateral under section 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right).

(b) Specified collateral: time of perfection by control; continuation of perfection.—A security interest in deposit accounts, electronic chattel paper or letter-of-credit rights is perfected by control under section 9104, 9105 or 9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection.—A security interest in investment property is perfected by control under section 9106 from the time the secured party obtains control and remains perfected by control until both of the following paragraphs apply:

- (1) The secured party does not have control.
- (2) One of the following occurs:
 - (i) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate.
 - (ii) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner.
 - (iii) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§ 9315. Secured party's rights on disposition of collateral and in proceeds.

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds.—Except as otherwise provided in this division and in section 2403(b) (relating to transfer by merchant entrusted with possession of goods):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable.—Proceeds which are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by section 9336 (relating to commingled goods); and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of

equitable principles, that is permitted under law other than this division with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds.—A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection.—A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless one of the following paragraphs applies:

(1) The conditions set forth in all of the following subparagraphs are satisfied:

(i) A filed financing statement covers the original collateral.

(ii) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed.

(iii) The proceeds are not acquired with cash proceeds.

(2) The proceeds are identifiable cash proceeds.

(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) When perfected security interest in proceeds becomes unperfected.—If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under section 9515 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement) or is terminated under section 9513 (relating to termination statement); or

(2) the 21st day after the security interest attaches to the proceeds.

§ 9316. Continued perfection of security interest following change in governing law.

(a) General rule: effect on perfection of change in governing law.—A security interest perfected pursuant to the law of the jurisdiction designated in section 9301(a) (relating to general rule: location of debtor) or 9305(c) (relating to when perfection governed by law of jurisdiction where debtor located) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction.—If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the

security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction.—A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from the Commonwealth.—Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Commonwealth remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers.—A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9311(b) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties) or 9313 (relating to when possession by or delivery to secured party perfects security interest without filing) are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Commonwealth; or
- (2) the expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary or commodity intermediary.—A security interest in deposit accounts, letter-of-credit rights or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- (1) the time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction.—If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SUBCHAPTER C PRIORITY

Sec.

- 9317. Interests which take priority over or take free of security interest or agricultural lien.
- 9318. No interest retained in right to payment which is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.
- 9319. Rights and title of consignee with respect to creditors and purchasers.
- 9320. Buyer of goods.
- 9321. Licensee of general intangible and lessee of goods in ordinary course of business.
- 9322. Priorities among conflicting security interests in and agricultural liens on same collateral.
- 9323. Future advances.
- 9324. Priority of purchase-money security interests.
- 9325. Priority of security interests in transferred collateral.
- 9326. Priority of security interests created by new debtor.
- 9327. Priority of security interests in deposit account.
- 9328. Priority of security interests in investment property.
- 9329. Priority of security interests in letter-of-credit right.
- 9330. Priority of purchaser of chattel paper or instrument.
- 9331. Priority of rights of purchasers of instruments, documents and securities under other divisions; priority of interests in financial assets and security entitlements under Division 8.
- 9332. Transfer of money; transfer of funds from deposit account.
- 9333. Priority of certain liens arising by operation of law.
- 9334. Priority of security interests in fixtures and crops.
- 9335. Accessions.
- 9336. Commingled goods.
- 9337. Priority of security interests in goods covered by certificate of title.
- 9338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

9339. Priority subject to subordination.

§ 9317. Interests which take priority over or take free of security interest or agricultural lien.

(a) *Conflicting security interests and rights of lien creditors.*—A security interest or agricultural lien is subordinate to the rights of all of the following:

(1) A person entitled to priority under section 9322 (relating to priorities among conflicting security interests in and agricultural liens on same collateral).

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(i) the security interest or agricultural lien is perfected; or

(ii) one of the conditions specified in section 9203(b)(3) (relating to enforceability) is met and a financing statement covering the collateral is filed.

(b) *Buyers that receive delivery.*—Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) *Lessees that receive delivery.*—Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) *Licensees and buyers of certain collateral.*—A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) *Purchase-money security interest.*—Except as otherwise provided in sections 9320 (relating to buyer of goods) and 9321 (relating to licensee of general intangible and lessee of goods in ordinary course of business), if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

§ 9318. No interest retained in right to payment which is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) Seller retains no interest.—A debtor that has sold an account, chattel paper, payment intangible or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected.—For purposes of determining the rights of creditors of and purchasers for value of an account or chattel paper from a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

§ 9319. Rights and title of consignee with respect to creditors and purchasers.

(a) Consignee has consignor's rights.—Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of and purchasers for value of goods from a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law.—For purposes of determining the rights of a creditor of a consignee, law other than this division determines the rights and title of a consignee while goods are in the consignee's possession if, under this chapter, a perfected security interest held by the consignor would have priority over the rights of the creditor.

§ 9320. Buyer of goods.

(a) Buyer in ordinary course of business.—Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods.—Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family or household purposes;

and

(4) before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b).—To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9316(a) and (b) (relating to continued perfection of security interest following change in governing law).

(d) Buyer in ordinary course of business at wellhead or minehead.—A buyer in ordinary course of business buying oil, gas or other minerals at the

wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected.—Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9313 (relating to when possession by or delivery to secured party perfects security interest without filing).

§ 9321. Licensee of general intangible and lessee of goods in ordinary course of business.

(a) Licensee in ordinary course of business.—As used in this section, the term “licensee in ordinary course of business” means a person that becomes a licensee of a general intangible in good faith, without knowledge that the licensee violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor’s own usual or customary practices.

(b) Rights of licensee in ordinary course of business.—A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business.—A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor even if the security interest is perfected and the lessee knows of its existence.

§ 9322. Priorities among conflicting security interests in and agricultural liens on same collateral.

(a) General priority rules.—Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

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

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations.—For the purposes of subsection (a)(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations.—Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under section 9327 (relating to priority of security interests in deposit account), 9328 (relating to priority of security interests in investment property), 9329 (relating to priority of security interests in letter-of-credit right), 9330 (relating to priority of purchaser of chattel paper or instrument) or 9331 (relating to priority of rights of purchasers of instruments, documents and securities under other divisions; priority of interests in financial assets and security entitlements under Division 8) also has priority over a conflicting security interest in all of the following:

(1) Any supporting obligation for the collateral.

(2) Proceeds of the collateral if:

(i) the security interest in proceeds is perfected;

(ii) the proceeds are cash proceeds or of the same type as the collateral; and

(iii) in the case of proceeds which are proceeds of proceeds, all intervening proceeds are:

(A) cash proceeds;

(B) proceeds of the same type as the collateral; or

(C) an account relating to the collateral.

(d) First-to-file priority rule for certain collateral.—Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d).—Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property or letter-of-credit rights.

(f) Limitations on subsections (a) through (e).—Subsections (a) through (e) are subject to:

(1) subsection (g) and the other provisions of this chapter;

(2) section 4210 (relating to security interest of collecting bank in items, accompanying documents and proceeds);

(3) section 5118 (relating to security interest of issuer or nominated person); and

(4) section 9110 (relating to security interests arising under Division 2 or 2A).

(g) Priority under agricultural lien statute.—A perfected agricultural lien on collateral has priority over a conflicting security interest in or

agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§ 9323. Future advances.

(a) When priority based on time of advance.—Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under section 9322(a)(1) (relating to general priority rules), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance which:

(1) is made while the security interest is perfected only:

(i) under section 9309 (relating to security interest perfected upon attachment) when it attaches; or

(ii) temporarily under any of the following sections:

(A) 9312(e) (relating to temporary perfection: new value);

(B) 9312(f) (relating to temporary perfection: goods or documents made available to debtor); or

(C) 9312(g) (relating to temporary perfection: delivery of security certificate or instrument to debtor); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 9309 or 9312(e), (f) or (g).

(b) Lien creditor.—Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables.—Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor.

(d) Buyer of goods.—Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods.—Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Lessee of goods.—Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the

leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- (1) the time the secured party acquires knowledge of the lease; or
- (2) 45 days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods.—Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

§ 9324. Priority of purchase-money security interests.

(a) General rule: purchase-money priority.—Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9327 (relating to priority of security interests in deposit account), a perfected security interest in its identifiable proceeds also has priority if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Inventory purchase-money priority.—Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory; has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper if so provided in section 9330 (relating to priority of purchaser of chattel paper or instrument); and, except as otherwise provided in section 9327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

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

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(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 sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified.—Subsection (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9312(f) (relating to temporary

perfection: goods or documents made available to debtor), before the beginning of the 20-day period thereunder.

(d) Livestock purchase-money priority.—Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock which are farm products has priority over a conflicting security interest in the same livestock; and, except as otherwise provided in section 9327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured state also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified.—Subsection (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9312(f), before the beginning of the 20-day period thereunder.

(f) Software purchase-money priority.—Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral; and, except as otherwise provided in section 9327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests.—If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d) or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, section 9322(a) (relating to general priority rules) applies to the qualifying security interests.

§ 9325. Priority of security interests in transferred collateral.

(a) Subordination of security interest in transferred collateral.—Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination.—Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under section 9322(a) (relating to general priority rules) or 9324 (relating to priority of purchase-money security interests); or

(2) arose solely under section 2711(c) (relating to security interest of buyer in rejected goods) or 2A508(e) (relating to security interest in goods in lessee's possession).

§ 9326. Priority of security interests created by new debtor.

(a) Subordination of security interest created by new debtor.—Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement which is effective solely under section 9508 (relating to effectiveness of financing statement if new debtor becomes bound by security agreement) in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement which is effective solely under section 9508.

(b) Priority under other provisions; multiple original debtors.—The other provisions of this chapter determine the priority among conflicting security interests in the same collateral perfected by filed financing statements which are effective solely under section 9508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

§ 9327. Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under section 9104 (relating to control of deposit account) has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under section 9314 (relating to perfection by control) rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under section 9104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

§ 9328. Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest of a secured party having control of investment property under section 9106 (relating to control of investment property) has priority over a security interest of a secured party that does not have control over the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under section 9106 rank according to priority in time of:

(i) if the collateral is a security, obtaining control;

(ii) if the collateral is a security entitlement carried in a securities account and:

(A) if the secured party obtained control under section 8106(d)(1) (relating to control), the secured party's becoming the person for which the securities account is maintained;

(B) if the secured party obtained control under section 8106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(C) if the secured party obtained control through another person under section 8106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party; or

(iii) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 9106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 9313(a) (relating to perfection by possession or delivery) and not by control under section

9314 (relating to perfection by control) has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary or commodity intermediary which are perfected without control under section 9106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by sections 9322 (relating to priorities among conflicting security interests in and agricultural liens on same collateral) and 9323 (relating to future advances).

§ 9329. Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under section 9107 (relating to control of letter-of-credit right) has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under section 9314 (relating to perfection by control) rank according to priority in time of obtaining control.

§ 9330. Priority of purchaser of chattel paper or instrument.

(a) Purchaser's priority: security interest claimed merely as proceeds.—A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9105 (relating to control of electronic chattel paper); and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests.—A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9105 in good faith, in the ordinary course of the purchaser's business and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds.—Except as otherwise provided in section 9327 (relating to priority of security interests in deposit account), a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) section 9322 (relating to priorities among conflicting security interests in and agricultural liens on same collateral) provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority.—Except as otherwise provided in section 9331(a) (relating to rights under Divisions 3, 7 and 8 not limited), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value.—For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge.—For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

§ 9331. Priority of rights of purchasers of instruments, documents and securities under other divisions; priority of interests in financial assets and security entitlements under Division 8.

(a) Rights under Divisions 3, 7 and 8 not limited.—This division does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Divisions 3 (relating to negotiable instruments), 7 (relating to warehouse receipts, bills of lading and other documents of title) and 8 (relating to investment securities).

(b) Protection under Division 8.—This division does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Division 8.

(c) Filing not notice.—Filing under this division does not constitute notice of a claim or defense to the holders, purchasers or persons described in subsections (a) and (b).

§ 9332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of money.—A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account.—A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

§ 9333. Priority of certain liens arising by operation of law.

(a) Possessory lien.—As used in this section, the term “possessory lien” means an interest, other than a security interest or an agricultural lien:

(1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person’s business;

(2) which is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person’s possession of the goods.

(b) Priority of possessory lien.—A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute which expressly provides otherwise.

§ 9334. Priority of security interests in fixtures and crops.

(a) Security interest in fixtures under this division.—A security interest under this division may be created in goods which are fixtures or may continue in goods which become fixtures. A security interest does not exist under this division in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real property law.—This division does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures.—In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority.—Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property.—A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if any of the following paragraphs apply:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner.

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this division and the fixtures are readily removable:

- (i) factory or office machines;
- (ii) equipment which is not primarily used or leased for use in the operation of the real property; or
- (iii) replacements of domestic appliances which are consumer goods.

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

(4) The security interest is:

- (i) created in a manufactured home in a manufactured-home transaction; and
- (ii) perfected pursuant to a statute described in section 9311(a)(2) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties).

(f) Priority based on consent, disclaimer or right to remove.—A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or 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.

(g) Continuation of subsection (f)(2) priority.—The priority of the security interest under subsection (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of 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 a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops.—A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

§ 9335. Accessions.

(a) Creation of security interest in accession.—A security interest may be created in an accession and continues in collateral which becomes an accession.

(b) Perfection of security interest.—If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest.—Except as otherwise provided in subsection (d), the other provisions of this chapter determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute.—A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 9311(b) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties).

(e) Removal of accession after default.—After default, subject to Chapter 96 (relating to default), a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal.—A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§ 9336. Commingled goods.

(a) Commingled goods.—As used in this section, the term “commingled goods” means goods which are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such.—A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass which results when goods become commingled goods.

(c) Attachment of security interest to product or mass.—If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest.—If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest which attaches to the product or mass under subsection (c) is perfected.

(e) Priority of security interest.—Except as otherwise provided in subsection (f), the other provisions of this chapter determine the priority of a security interest which attaches to the product or mass under subsection (c).

(f) Conflicting security interests in product or mass.—If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest which is perfected under subsection (d) has priority over a security interest which is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

§ 9337. Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, the Commonwealth issues a certificate of title which does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods which attaches, and is perfected under section 9311(b) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

§ 9338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9516(b)(5) (relating to what constitutes filing; effectiveness of filing) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments or a security certificate, receives delivery of the collateral.

§ 9339. Priority subject to subordination.

This division does not preclude subordination by agreement by a person entitled to priority.

**SUBCHAPTER D
RIGHTS OF BANK**

Sec.

9340. Effectiveness of right of recoupment or set-off against deposit account.

9341. Bank's rights and duties with respect to deposit account.

9342. Bank's right to refuse to enter into or disclose existence of control agreement.

§ 9340. Effectiveness of right of recoupment or set-off against deposit account.

(a) Exercise of recoupment or set-off.—Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest.—Except as otherwise provided in subsection (c), the application of this division to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective.—The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 9104(a)(3) (relating to requirements for control) if the set-off is based on a claim against the debtor.

§ 9341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in section 9340(c) (relating to when set-off ineffective) and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

(1) the creation, attachment or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

§ 9342. Bank's right to refuse to enter into or disclose existence of control agreement.

This division does not require a bank to enter into an agreement of the kind described in section 9104(a)(2) (relating to requirements for control) even if its customer so requests or directs. A bank which has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

CHAPTER 94
RIGHTS OF THIRD PARTIES

Sec.

9401. Alienability of debtor's rights.
9402. Secured party not obligated on contract of debtor or in tort.
9403. Agreement not to assert defenses against assignee.
9404. Rights acquired by assignee; claims and defenses against assignee.
9405. Modification of assigned contract.
9406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.
9407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessors residual interest.
9408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.
9409. Restrictions on assignment of letter-of-credit rights ineffective.

§ 9401. Alienability of debtor's rights.

(a) Other law governs alienability; exceptions.—Except as otherwise provided in subsections (b) and (c), whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this division.

(b) Agreement does not prevent transfer.—An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

(c) Exceptions.—Subsection (a) is also subject to the following:

(1) section 9406 (relating to discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective);

(2) section 9407 (relating to restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest);

(3) section 9408 (relating to restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective); and

(4) section 9409 (relating to restrictions on assignment of letter-of-credit rights ineffective).

§ 9402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

§ 9403. Agreement not to assert defenses against assignee.

(a) Value.—As used in this section, the term “value” has the meaning provided in section 3303(a) (relating to value).

(b) Agreement not to assert claim or defense.—Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense which the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) for value;
- (2) in good faith;
- (3) without notice of a claim of a property or possessory right to the property assigned; and
- (4) without notice of a defense or claim in recoupment of the type which may be asserted against a person entitled to enforce a negotiable instrument under section 3305(a) (relating to defenses and claims in recoupment).

(c) When subsection (b) not applicable.—Subsection (b) does not apply to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under section 3305(b).

(d) Omission of required statement in consumer transaction.—In a consumer transaction, if a record evidences the account debtor’s obligation, law other than this division requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses which the account debtor could assert against the original obligee and the record does not include such a statement:

- (1) the record has the same effect as if the record included such a statement; and
- (2) the account debtor may assert against an assignee those claims and defenses which would have been available if the record included such a statement.

(e) Rule for individual under other law.—This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(f) Other law not displaced.—Except as otherwise provided in subsection (d), this section does not displace law other than this division which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

§ 9404. Rights acquired by assignee; claims and defenses against assignee.

(a) Assignee’s rights subject to terms, claims and defenses; exceptions.—Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction which gave rise to the contract; and

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

(b) Account debtor's claim reduces amount owed to assignee.—Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) Rule for individual under other law.—This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) Omission of required statement in consumer transaction.—In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable.—This section does not apply to an assignment of a health-care-insurance receivable.

§ 9405. Modification of assigned contract.

(a) Effect of modification on assignee.—A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Applicability of subsection (a).—Subsection (a) applies to the extent that:

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 9406(a) (relating to discharge of account debtor; effect of notification).

(c) Rule for individual under other law.—This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) Inapplicability to health-care-insurance receivable.—This section does not apply to an assignment of a health-care-insurance receivable.

§ 9406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

(a) Discharge of account debtor; effect of notification.—Subject to subsections (b) through (i), an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective.—Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned.

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this division.

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee even if:

(i) only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(ii) a portion has been assigned to another assignee; or

(iii) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment.—Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective.—Except as otherwise provided in subsections (e) and (j) and sections 2A303 (relating to alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights) and 9407 (relating to restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest) and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of,

or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Inapplicability of subsection (d) to certain sales.—Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective.—Except as otherwise provided in subsection (j) and sections 2A303 and 9407 and subject to subsections (h) and (i), a rule of law, statute or regulation which prohibits, restricts or requires the consent of a government, governmental body or official or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

(1) prohibits, restricts or requires the consent of the government, governmental body or official or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable.—Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) Rule for individual under other law.—This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) Inapplicability to health-care-insurance receivable.—This section does not apply to an assignment of a health-care-insurance receivable.

(j) Section prevails over inconsistent law.—

(1) Except as set forth in paragraphs (2), (3), (4) and (5), this section prevails over any inconsistent provision of any existing or future statute or regulation of the Commonwealth unless the provision is contained in a statute of the Commonwealth, refers expressly to this section and states that the provision prevails over this section.

(2) Subsection (f) does not apply to an account or chattel paper if the account debtor is the Commonwealth.

(3) Subsection (f) does not apply to the following:

(i) A claim or right to receive benefits under a workers' compensation act as compensation for personal injury or sickness,

including a claim or right to receive benefits under the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

(ii) The act of June 21, 1939 (P.L.566, No.284), known as The Pennsylvania Occupational Disease Act.

(iii) Section 306 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law.

(4) Subsections (d) and (f) do not apply to a claim or right to receive benefits from a special needs trust described in section 1917(d)(4) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396p(d)(4)).

(5) The limitations on restrictions of assignments contained in this section are inapplicable to transfers of structured settlement payment rights pursuant to the act of February 11, 2000 (P.L.1, No.1), known as the Structured Settlement Protection Act.

§ 9407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) Term restricting assignment generally ineffective.—Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the lease.

(b) Effectiveness of certain terms.—Except as otherwise provided in section 2A303(g) (relating to requirements for prohibition of transfer in consumer lease), a term described in subsection (a)(2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment.—The creation, attachment, perfection or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer which materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 2A303(d) (relating to certain rights and remedies) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

§ 9408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective.—Except as otherwise provided in subsections (b) and (e), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and which term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment or perfection of a security interest; or

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

(b) Applicability of subsection (a) to sales of certain rights to payment.—Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

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

(1) would impair the creation, attachment or perfection of a security interest; or

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

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

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

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

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

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

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

(e) Section prevails over inconsistent law.—

(1) Except as set forth in paragraphs (2), (3) and (4), this section prevails over any inconsistent provision of any existing or future statute or regulation of the Commonwealth unless the provision is contained in a statute of the Commonwealth, refers expressly to this section and states that the provision prevails over this section.

(2) Subsection (c) does not apply to the provisions, claims and rights listed in section 9406(j)(3) (relating to discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective).

(3) Subsections (a) and (c) do not apply to the claims and rights described in section 9406(j)(4).

(4) The limitations on restrictions of assignments contained in this section are inapplicable to transfers of structured settlement payment rights pursuant to the act of February 11, 2000 (P.L.1, No.1), known as the Structured Settlement Protection Act.

§ 9409. Restrictions on assignment of letter-of-credit rights ineffective.

(a) Term or law restricting assignment generally ineffective.—A term in a letter of credit or a rule of law, statute, regulation, custom or practice applicable to the letter of credit which prohibits, restricts or requires the consent of an applicant, issuer or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom or practice:

(1) would impair the creation, attachment or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a).—To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this division or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit or to the assignment of a right to proceeds of the letter of credit, the creation, attachment or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person or transferee beneficiary to recognize the security interest, pay or render performance to the secured party or accept payment or other performance from the secured party.

CHAPTER 95
FILING

Subchapter

- A. Filing Office; Contents and Effectiveness of Financing Statement
- B. Duties and Operation of Filing Office

SUBCHAPTER A
FILING OFFICE; CONTENTS AND
EFFECTIVENESS OF FINANCING STATEMENT

Sec.

- 9501. Filing office.
- 9502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.
- 9503. Name of debtor and secured party.
- 9504. Indication of collateral.
- 9505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.
- 9506. Effect of errors or omissions.
- 9507. Effect of certain events on effectiveness of financing statement.
- 9508. Effectiveness of financing statement if new debtor becomes bound by security agreement.
- 9509. Persons entitled to file a record.
- 9510. Effectiveness of filed record.

- 9511. Secured party of record.
- 9512. Amendment of financing statement.
- 9513. Termination statement.
- 9514. Assignment of powers of secured party of record.
- 9515. Duration and effectiveness of financing statement; effect of lapsed financing statement.
- 9516. What constitutes filing; effectiveness of filing.
- 9517. Effect of indexing errors.
- 9518. Claim concerning inaccurate or wrongfully filed record.

§ 9501. Filing office.

(a) Filing offices.—Except as otherwise provided in subsection (b), if the local law of this Commonwealth governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is one of the following:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods which are or are to become fixtures.

(2) The office of the Secretary of the Commonwealth in all other cases, including a case in which the collateral is goods which are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities.—The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of the Commonwealth. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

§ 9502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Sufficiency of financing statement.—Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements.—Except as otherwise provided in section 9501(b) (relating to filing office for transmitting utilities), to be sufficient, a financing statement which covers as-extracted collateral or timber to be cut or which is filed as a fixture filing and covers goods which are or are to become fixtures must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed in the real property records;

(3) provide a description of the real property to which the collateral is related; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement.—A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts which it covers;

(2) the goods are or are to become fixtures related to the real property described in the record, or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) the record is duly recorded.

(d) Filing before security agreement or attachment.—A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

§ 9503. Name of debtor and secured party.

(a) Sufficiency of debtor's name.—A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized.

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate.

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(i) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(ii) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

(i) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(ii) if the debtor does not have a name, only if it provides the names of the partners, members, associates or other persons comprising the debtor.

(b) **Additional debtor-related information.**—A financing statement which provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(4)(ii), names of partners, members, associates or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.**—A financing statement which provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.**—Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.**—A financing statement may provide the name of more than one debtor and the name of more than one secured party.

§ 9504. Indication of collateral.

A financing statement sufficiently indicates the collateral which it covers if the financing statement provides:

(1) a description of the collateral pursuant to section 9108 (relating to sufficiency of description); or

(2) an indication that the financing statement covers all assets or all personal property.

§ 9505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.

(a) **Use of terms other than "debtor" and "secured party."**—A consignor, lessor or other bailor of goods, a licensor or a buyer of a payment intangible or promissory note may file a financing statement or may comply with a statute or treaty described in section 9311(a) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller" or words of similar import, instead of the terms "secured party" and "debtor."

(b) **Effect of financing statement under subsection (a).**—This chapter applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance which is equivalent to filing a financing statement under section 9311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner or buyer which attaches to the collateral is perfected by the filing or compliance.

§ 9506. Effect of errors or omissions.

(a) **Minor errors and omissions.**—A financing statement substantially satisfying the requirements of this chapter is effective even if it has minor

errors or omissions unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading.—Except as otherwise provided in subsection (c), a financing statement which fails sufficiently to provide the name of the debtor in accordance with section 9503(a) (relating to sufficiency of debtor’s name) is seriously misleading.

(c) Financing statement not seriously misleading.—If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement which fails sufficiently to provide the name of the debtor in accordance with section 9503(a), the name provided does not make the financing statement seriously misleading.

(d) Debtor’s correct name.—For purposes of section 9508(b) (relating to effectiveness of financing statement if new debtor becomes bound by security agreement), the “debtor’s correct name” in subsection (c) means the correct name of the new debtor.

§ 9507. Effect of certain events on effectiveness of financing statement.

(a) Disposition.—A filed financing statement remains effective with respect to collateral which is sold, exchanged, leased, licensed or otherwise disposed of and in which a security interest or agricultural lien continues even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading.—Except as otherwise provided in subsection (c) and section 9508 (relating to effectiveness of financing statement if new debtor becomes bound by security agreement), a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9506 (relating to effect of errors or omissions).

(c) Change in debtor’s name.—If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 9506:

- (1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before or within four months after the change; and
- (2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

§ 9508. Effectiveness of financing statement if new debtor becomes bound by security agreement.

(a) Financing statement naming original debtor.—Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement

would have been effective had the original debtor acquired rights in the collateral.

(b) **Financing statement becoming seriously misleading.**—If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement which is effective under subsection (a) to be seriously misleading under section 9506 (relating to effect of errors or omissions):

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before and within four months after the new debtor becomes bound under section 9203(d) (relating to when person becomes bound by another person's security agreement); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 9203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) **When section not applicable.**—This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 9507(a) (relating to disposition).
§ 9509. Persons entitled to file a record.

(a) **Person entitled to file record.**—A person may file an initial financing statement, amendment which adds collateral covered by a financing statement or amendment which adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien which has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.**—By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement and an amendment covering:

(1) the collateral described in the security agreement; and

(2) property which becomes collateral under section 9315(a)(2) (relating to secured party's rights on disposition of collateral and in proceeds), whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.**—By acquiring collateral in which a security interest or agricultural lien continues under section 9315(a)(1), a debtor authorizes the filing of an initial financing statement and an amendment covering the collateral and property which becomes collateral under section 9315(a)(2).

(d) **Person entitled to file certain amendments.**—A person may file an amendment other than an amendment which adds collateral covered by a

financing statement or an amendment which adds a debtor to a financing statement only if:

- (1) the secured party of record authorizes the filing; or
- (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 9513(a) or (c) (relating to termination statement), the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.

(e) *Multiple secured parties of record.*—If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

§ 9510. Effectiveness of filed record.

(a) *Filed record effective if authorized.*—A filed record is effective only to the extent that it was filed by a person that may file it under section 9509 (relating to persons entitled to file a record).

(b) *Authorization by one secured party of record.*—A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) *Continuation statement not timely filed.*—A continuation statement which is not filed within the six-month period prescribed by section 9515(d) (relating to when continuation statement may be filed) is ineffective.

§ 9511. Secured party of record.

(a) *Secured party of record.*—A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement which has been filed. If an initial financing statement is filed under section 9514(a) (relating to assignment reflected on initial financing statement), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) *Amendment naming secured party of record.*—If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 9514(b), the assignee named in the amendment is a secured party of record.

(c) *Amendment deleting secured party of record.*—A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

§ 9512. Amendment of financing statement.

(a) *Amendment of information in financing statement.*—Subject to section 9509 (relating to persons entitled to file a record), a person may add or delete collateral covered by, continue or terminate the effectiveness of or, subject to subsection (e), otherwise amend the information provided in a financing statement by filing an amendment which:

(1) identifies by its file number the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed in a filing office described in section 9501(a)(1) (relating to filing offices), provides the information specified in section 9502(b) (relating to real-property-related financing statements).

(b) Period of effectiveness not affected.—Except as otherwise provided in section 9515 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement), the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral.—A financing statement which is amended by an amendment which adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor.—A financing statement which is amended by an amendment which adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective.—An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

§ 9513. Termination statement.

(a) Consumer goods.—A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a).—To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral.—In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper which has been sold or goods which are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value;

(2) the financing statement covers accounts or chattel paper which has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods which were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement.—Except as otherwise provided in section 9510 (relating to effectiveness of filed record), upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 9510, for purposes of sections 9519(g) (relating to removal of debtor's name), 9522(a) (relating to post-lapse maintenance and retrieval of information) and 9523(c) (relating to communication of requested information), the filing with the filing office of a termination statement relating to a financing statement which indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

§ 9514. Assignment of powers of secured party of record.

(a) Assignment reflected on initial financing statement.—Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement.—Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) identifies by its file number the initial financing statement to which it relates;

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage.—An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 9502(c) (relating to record of mortgage as financing statement) may be made only by an assignment of record of the mortgage in the manner provided by law of this Commonwealth other than this title.

§ 9515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) **Five-year effectiveness.**—Except as otherwise provided in subsections (b), (e), (f) and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) **Public-finance or manufactured-home transaction.**—Except as otherwise provided in subsections (e), (f) and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) **Lapse and continuation of financing statement.**—The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien which was perfected by the financing statement becomes unperfected unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.**—A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) **Effect of filing continuation statement.**—Except as otherwise provided in section 9510 (relating to effectiveness of filed record), upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.**—If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.**—A record of a mortgage which is effective as a financing statement filed as a fixture filing under section 9502(c) (relating to record of mortgage as financing statement) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

§ 9516. What constitutes filing; effectiveness of filing.

(a) **What constitutes filing.**—Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur.—Filing does not occur with respect to a record which a filing office refuses to accept because one of the following paragraphs applies:

(1) The record is not communicated by a method or medium of communication authorized by the filing office.

(2) An amount equal to or greater than the applicable filing fee is not tendered.

(3) The filing office is unable to index the record because of a reason stated in one of the following subparagraphs:

(i) In the case of an initial financing statement, the record does not provide a name for the debtor.

(ii) In the case of an amendment or correction statement, the record:

(A) does not identify the initial financing statement as required by section 9512 (relating to amendment of financing statement) or 9518 (relating to claim concerning inaccurate or wrongfully filed record), as applicable; or

(B) identifies an initial financing statement whose effectiveness has lapsed under section 9515 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement).

(iii) In the case of an initial financing statement which provides the name of a debtor identified as an individual or an amendment which provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name.

(iv) In the case of a record filed in the filing office described in section 9501(a)(1) (relating to filing offices), the record does not provide a sufficient description of the real property to which it relates.

(4) In the case of an initial financing statement or an amendment which adds a secured party of record, the record does not provide a name and mailing address for the secured party of record.

(5) In the case of an initial financing statement or an amendment which provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not do one or more of the following:

(i) Provide a mailing address for the debtor.

(ii) Indicate whether the debtor is an individual or an organization.

(iii) If the financing statement indicates that the debtor is an organization, provide:

(A) a type of organization for the debtor;

(B) a jurisdiction of organization for the debtor; or

(C) an organizational identification number for the debtor or indicate that the debtor has none.

(6) In the case of an assignment reflected in an initial financing statement under section 9514(a) (relating to assignment reflected on initial financing statement) or an amendment filed under section 9514(b) (relating to assignment of filed financing statement), the record does not provide a name and mailing address for the assignee.

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9515(d) (relating to when continuation statement may be filed).

(c) Rules applicable to subsection (b).—For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record which does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9512, 9514 or 9518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record.—A record which is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

§ 9517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

§ 9518. Claim concerning inaccurate or wrongfully filed record.

(a) Correction statement.—A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement.—A correction statement must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is a correction statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by correction statement.—Except as provided in subsection (d), the filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

(d) Fraudulent financing statements.—

(1) The Department of State may conduct an administrative hearing to determine if an initial financing statement was fraudulently filed in accordance with the following:

(i) The hearing shall be conducted in accordance with 2 Pa.C.S. (relating to Administrative Law and Procedure). The department shall

determine the initial financing statement to be fraudulently filed for purposes of this subsection if it determines that no rational basis exists under section 9509 (relating to persons entitled to file a record) entitling the person to file the initial financing statement and it appears that the person filed the initial financing statement with intent to annoy, harass or harm the debtor.

(ii) If the department determines that the initial financing statement was fraudulently filed and no timely appeal of the determination was filed, the department shall file a correction statement with respect to the initial financing statement indexed there. In addition to complying with the requirements of subsection (b), the correction statement filed by the department under this paragraph shall state all of the following:

(A) the correction statement was filed by the department under this subsection;

(B) the department has determined that the initial financing statement was fraudulently filed and that the person had the right to appeal the decision to a court of competent jurisdiction;

(C) the initial financing statement found to be fraudulently filed may be ineffective; and

(D) the reasons why the department found the initial financing statement to have been fraudulently filed.

(iii) A correction statement filed by the department in accordance with paragraph (ii) creates a rebuttable presumption that the initial financing statement found to be fraudulently filed is ineffective.

(iv) A person adversely affected by a determination of the department under paragraph (i) may appeal the determination in accordance with 2 Pa.C.S. § 702 (relating to appeals).

(v) If the department determines that the initial financing statement was fraudulently filed and the determination is appealed to Commonwealth Court, the department shall file a correction statement with respect to the initial financing statement indexed there only upon affirmation by the court of its determination. In addition to complying with the requirements of subsection (b), the correction statement shall state all of the following:

(A) the correction statement was filed by the department under this subsection;

(B) the department has determined that the initial financing statement was fraudulently filed and that the person had the right to appeal the decision to a court of competent jurisdiction;

(C) the initial financing statement found to be fraudulently filed¹ is ineffective; and

¹ "filed" omitted in enrolled bill.

(D) the reasons why the department found the initial financing statement to have been fraudulently filed.

(vi) If the department files a correction statement with respect to the initial financing statement indexed there under this subsection, it shall refer the matter for criminal prosecution to the Office of Attorney General pursuant to 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

(2) Nothing in this subsection limits the rights or remedies the debtor may have with respect to an initial financing statement that has been fraudulently filed. Nothing in this subsection limits the effectiveness of a termination or correction statement filed by a debtor under sections 9509(d)(2) and 9513 (relating to termination statement) or the rights of a debtor under section 9625 (relating to remedies for secured party's failure to comply with division).

SUBCHAPTER B DUTIES AND OPERATION OF FILING OFFICE

Sec.

9519. Numbering, maintaining and indexing records; communicating information provided in records.

9520. Acceptance and refusal to accept record.

9521. Uniform form of written financing statement and amendment.

9522. Maintenance and destruction of records.

9523. Information from filing office; sale or license of records.

9524. Delay by filing office.

9525. Fees.

9526. Filing-office rules.

9527. Duty to report.

§ 9519. Numbering, maintaining and indexing records; communicating information provided in records.

(a) Filing office duties.—For each record filed in a filing office, the filing office shall:

(1) assign a unique number to the filed record;

(2) create a record which bears the number assigned to the filed record and the date and time of filing;

(3) maintain the filed record for public inspection; and

(4) index the filed record in accordance with subsections (c), (d) and (e).

(b) File number.—Except as provided in subsection (i), a file number assigned after January 1, 2002, must include a digit which:

(1) is mathematically derived from or related to the other digits of the file number; and

(2) aids the filing office in determining whether a number communicated as the file number includes a single digit or transpositional error.

(c) Indexing: general.—Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner which associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record which provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name which was not previously provided.

(d) Indexing: real-property-related financing statement.—If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this Commonwealth provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing: real-property-related assignment.—If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 9514(a) (relating to assignment reflected on initial financing statement) or an amendment filed under section 9514(b) (relating to assignment of filed financing statement):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this Commonwealth provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability.—The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name.—The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 9515 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement) with respect to all secured parties of record.

(h) **Timeliness of filing office performance.**—Except as provided in subsection (i), the filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule but not later than five business days after the filing office receives the record in question.

(i) **Inapplicability to real-property-related filing office.**—Subsections (b) and (h) do not apply to a filing office described in section 9501(a)(1) (relating to filing offices).

§ 9520. Acceptance and refusal to accept record.

(a) **Mandatory refusal to accept record.**—A filing office shall refuse to accept a record for filing for a reason set forth in section 9516(b) (relating to refusal to accept record; filing does not occur) and may refuse to accept a record for filing only for a reason set forth in section 9516(b).

(b) **Communication concerning refusal.**—If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in section 9501(a)(2) (relating to filing offices), in no event more than five business days after the filing office receives the record.

(c) **When filed financing statement effective.**—A filed financing statement satisfying section 9502(a) and (b) (relating to contents of financing statement; record of mortgage as financing statement; time of filing financing statement) is effective even if the filing office is required to refuse to accept it for filing under subsection (a). However, section 9338 (relating to priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information) applies to a filed financing statement providing information described in section 9516(b)(5) which is incorrect at the time the financing statement is filed.

(d) **Separate application to multiple debtors.**—If a record communicated to a filing office provides information which relates to more than one debtor, this chapter applies as to each debtor separately.

§ 9521. Uniform form of written financing statement and amendment.

(a) **Initial financing statement form.**—A filing office which accepts written records may not refuse to accept a written initial financing statement in the form and format set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in section 9516(b) (relating to refusal to accept record; filing does not occur).

(b) **Amendment form.**—A filing office which accepts written records may not refuse to accept a written record in the form and format set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the

National Conference of Commissioners on Uniform State Laws, except for a reason set forth in section 9516(b).

§ 9522. Maintenance and destruction of records.

(a) Post-lapse maintenance and retrieval of information.—The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9515 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement) with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records.—Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

§ 9523. Information from filing office; sale or license of records.

(a) Acknowledgment of filing written record.—If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9519(a)(1) (relating to numbering, maintaining and indexing records; communicating information provided in records) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

- (1) note upon the copy the number assigned to the record pursuant to section 9519(a)(1) and the date and time of the filing of the record; and
- (2) send the copy to the person.

(b) Acknowledgment of filing other record.—If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment which provides:

- (1) the information in the record;
 - (2) the number assigned to the record pursuant to section 9519(a)(1);
- and
- (3) the date and time of the filing of the record.

(c) Communication of requested information.—The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

- (1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement which:
 - (i) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(ii) has not lapsed under section 9515 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement) with respect to all secured parties of record; and

(iii) if the request so states, has lapsed under section 9515 and a record of which is maintained by the filing office under section 9522(a) (relating to post-lapse maintenance and retrieval of information).

(2) The date and time of filing of each financing statement.

(3) The information provided in each financing statement.

(d) Medium for communicating information.—In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) Timeliness of filing office performance.—

(1) Except as set forth in paragraph (2), the filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule.

(2) A filing office described in section 9501(a)(2) (relating to filing offices) shall perform the acts required by subsections (a) through (d) not later than five business days after the filing office receives the request.

(f) Public availability of records.—At least weekly, the filing office described in section 9501(a)(2) shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this chapter in every medium from time to time available to the filing office.

§ 9524. Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this chapter is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment or other circumstances beyond control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

§ 9525. Fees.

(a) Initial financing statement or other record.—Except as otherwise provided in subsections (c) and (d):

(1) The fee for filing and indexing a record under this chapter shall be as follows:

(i) For a record communicated to a filing office described in section 9501(a)(1) (relating to filing office), \$48.

(ii) For a record communicated to a filing office described in section 9501(a)(2), \$12.

(2) The amount of the fee for filing and indexing the record is not affected by the number of names to be indexed or the number of pages in the record.

(b) Response to information request.—Except as otherwise provided in subsection (d), the fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, shall be as follows:

(1) The basic charge is \$12.

(2) If the filing office responds to the request in writing, there is an additional charge of:

(i) no charge per record found;

(ii) \$2 per page of copies; and

(iii) if certification is requested, \$28.

(c) Record of mortgage.—This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9502(c) (relating to record of mortgage as financing statement). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(d) Variation by regulation.—Within 90 days of the effective date of this subsection, the Department of State shall promulgate regulations regarding the fees required by subsections (a) and (b). The department shall establish fees required by subsection (a)(1)(i) that generate revenue equivalent to the amount collected from UCC filing fees by all counties during calendar year 2000. The department shall establish fees required by subsection (a)(1)(ii) which generate revenue equivalent to the amount collected from UCC filing fees and deposited in the General Fund and the Corporation Bureau Restricted Account during fiscal year 1999-2000. Changes in the fees shall be promulgated as a final-form regulation with proposed rulemaking omitted in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. After July 1, 2001, the department may promulgate regulations in accordance with the Regulatory Review Act regarding the fees required by subsections (a) and (b) for services rendered by the department. Fee regulations promulgated by the department under this subsection shall supersede the fees listed in subsections (a) and (b).

§ 9526. Filing-office rules.

(a) Adoption of filing-office rules.—The Department of State shall promulgate rules to implement this division. The filing-office rules must be consistent with this division.

(b) Harmonization of rules.—To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions which enact substantially this chapter and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions which enact substantially this chapter, the department, so far as is consistent with the purposes, policies and provisions of this division, in promulgating filing-office rules, shall:

(1) consult with filing offices in other jurisdictions which enact substantially this chapter;

(2) consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) take into consideration the rules and practices of and the technology used by filing offices in other jurisdictions which enact substantially this chapter.

§ 9527. Duty to report.

The Department of State shall report by October 31 of every even-numbered year to the Governor and the General Assembly on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions which enact substantially this chapter and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization and the reasons for these variations.

CHAPTER 96
DEFAULT

Subchapter

- A. Default and Enforcement of Security Interest
- B. Noncompliance with Division

SUBCHAPTER A
DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

Sec.

- 9601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.
- 9602. Waiver and variance of rights and duties.
- 9603. Agreement on standards concerning rights and duties.
- 9604. Procedure if security agreement covers real property or fixtures.
- 9605. Unknown debtor or secondary obligor.
- 9606. Time of default for agricultural lien.
- 9607. Collection and enforcement by secured party.
- 9608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.
- 9609. Secured party's right to take possession after default.
- 9610. Disposition of collateral after default.
- 9611. Notification before disposition of collateral.
- 9612. Timeliness of notification before disposition of collateral.

- 9613. Contents and form of notification before disposition of collateral: general.
- 9614. Contents and form of notification before disposition of collateral: consumer-goods transaction.
- 9615. Application of proceeds of disposition; liability for deficiency and right to surplus.
- 9616. Explanation of calculation of surplus or deficiency.
- 9617. Rights of transferee of collateral.
- 9618. Rights and duties of certain secondary obligors.
- 9619. Transfer of record or legal title.
- 9620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.
- 9621. Notification of proposal to accept collateral.
- 9622. Effect of acceptance of collateral.
- 9623. Right to redeem collateral.
- 9624. Waiver.

§ 9601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

(a) Rights of secured party after default.—After default, a secured party has the rights provided in this chapter and, except as otherwise provided in section 9602 (relating to waiver and variance of rights and duties), those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control.—A secured party in possession of collateral or control of collateral under section 9104 (relating to control of deposit account), 9105 (relating to control of electronic chattel paper), 9106 (relating to control of investment property) or 9107 (relating to control of letter-of-credit right) has the rights and duties provided in section 9207 (relating to rights and duties of secured party having possession or control of collateral).

(c) Rights cumulative; simultaneous exercise.—The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor.—Except as otherwise provided in subsection (g) and section 9605 (relating to unknown debtor or secondary obligor), after default, a debtor and an obligor have the rights provided in this chapter and by agreement of the parties.

(e) Lien of levy after judgment.—If a secured party has reduced its claim to judgment, the lien of any levy which may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the agricultural lien was created.

(f) Execution sale.—A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

(g) Consignor or buyer of certain rights to payment.—Except as otherwise provided in section 9607(c) (relating to commercially reasonable collection and enforcement), this chapter imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes.

§ 9602. Waiver and variance of rights and duties.

Except as otherwise provided in section 9624 (relating to waiver), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in:

- (1) section 9207(b)(4)(iii) (relating to expenses, risks, duties and rights when secured party in possession);
- (2) section 9210 (relating to request for accounting; request regarding list of collateral or statement of account);
- (3) section 9607(c) (relating to commercially reasonable collection and enforcement);
- (4) sections 9608(a) (relating to application of proceeds, surplus and deficiency if obligation secured) and 9615(c) (relating to application of noncash proceeds) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement or disposition;
- (5) sections 9608(a) and 9615(d) (relating to surplus or deficiency if obligation secured) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) section 9609 (relating to secured party's right to take possession after default) to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) sections 9610(b) (relating to commercially reasonable disposition), 9611 (relating to notification before disposition of collateral), 9613 (relating to contents and form of notification before disposition of collateral: general) and 9614 (relating to contents and form of notification before disposition of collateral: consumer-goods transaction);
- (8) section 9615(f) (relating to calculation of surplus or deficiency in disposition to person related to secured party);

(9) section 9616 (relating to explanation of calculation of surplus or deficiency);

(10) sections 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral), 9621 (relating to notification of proposal to accept collateral) and 9622 (relating to effect of acceptance of collateral);

(11) section 9623 (relating to right to redeem collateral);

(12) section 9624 (relating to waiver); and

(13) sections 9625 (relating to remedies for secured party's failure to comply with division) and 9626 (relating to action in which deficiency or surplus is in issue).

§ 9603. Agreement on standards concerning rights and duties.

(a) Agreed standards.—The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9602 (relating to waiver and variance of rights and duties) if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace.—Subsection (a) does not apply to the duty under section 9609 (relating to secured party's right to take possession after default) to refrain from breaching the peace.

§ 9604. Procedure if security agreement covers real property or fixtures.

(a) Enforcement: personal and real property.—If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this chapter as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this chapter do not apply.

(b) Enforcement: fixtures.—Subject to subsection (c), if a security agreement covers goods which are or become fixtures, a secured party may proceed:

(1) under this chapter; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this chapter do not apply.

(c) Removal of fixtures.—Subject to the other provisions of this chapter, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal.—A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the

secured party gives adequate assurance for the performance of the obligation to reimburse.

§ 9605. Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party to any of the following:

(1) A person that is a debtor or obligor unless the secured party knows:

- (i) that the person is a debtor or obligor;
- (ii) the identity of the person; and
- (iii) how to communicate with the person.

(2) A secured party or lienholder that has filed a financing statement against a person unless the secured party knows:

- (i) that the person is a debtor; and
- (ii) the identity of the person.

§ 9606. Time of default for agricultural lien.

For purposes of this chapter, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

§ 9607. Collection and enforcement by secured party.

(a) Collection and enforcement generally.—If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under section 9315 (relating to secured party's rights on disposition of collateral and in proceeds);

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor and with respect to any property which secures the obligations of the account debtor or other person obligated on the collateral;

(4) if the secured party holds a security interest in a deposit account perfected by control under section 9104(a)(1) (relating to requirements for control), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if the secured party holds a security interest in a deposit account perfected by control under section 9104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage.—If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement which creates or provides for a security interest in the obligation secured by the mortgage.

(2) The secured party's sworn affidavit in recordable form stating that:

(i) a default has occurred; and

(ii) the secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement.—A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement.—A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected.—This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party.

§ 9608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) Application of proceeds, surplus and deficiency if obligation secured.—If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 9607 (relating to collection and enforcement by secured party) in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(iii).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment.—If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

§ 9609. Secured party's right to take possession after default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises.—After default, a secured party:

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 9610 (relating to disposition of collateral after default).

(b) Judicial and nonjudicial process.—A secured party may proceed under subsection (a):

(1) pursuant to judicial process; or

(2) without judicial process if it proceeds without breach of the peace.

(c) Assembly of collateral.—If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

§ 9610. Disposition of collateral after default.

(a) Disposition after default.—After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition.—Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels and at any time and place and on any terms.

(c) Purchase by secured party.—A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind which is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition.—A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet

enjoyment and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties.—A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner which would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties.—A record is sufficient to disclaim warranties under subsection (e) if it indicates “There is no warranty relating to title, possession, quiet enjoyment or the like in this disposition” or uses words of similar import.

§ 9611. Notification before disposition of collateral.

(a) Notification date.—As used in this section, the term “notification date” means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required.—Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 9610 (relating to disposition of collateral after default) shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified.—To comply with subsection (b), the secured party shall send an authenticated notification of disposition to all of the following:

(1) The debtor.

(2) Any secondary obligor.

(3) If the collateral is other than consumer goods, all of the following:

(i) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.

(ii) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement which:

(A) identified the collateral;

(B) was indexed under the debtor’s name as of that date; and

(C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.

(iii) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance

with a statute, regulation or treaty described in section 9311(a) (relating to security interest subject to other law).

(d) Subsection (b) inapplicable: perishable collateral; recognized market.—Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(ii).—A secured party complies with the requirement for notification prescribed by subsection (c)(3)(ii) if both of the following paragraphs apply:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(ii).

(2) Before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

§ 9612. Timeliness of notification before disposition of collateral.

(a) Reasonable time is question of fact.—Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in nonconsumer transaction.—In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

§ 9613. Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral which is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(v) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification which lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient even if the notification includes:

- (i) information not specified by that paragraph; or
- (ii) minor errors which are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in section 9614(3) (relating to contents and form of notification before disposition of collateral: consumer-goods transaction), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: _____ (Name of debtor, obligor or other person to which the notification is sent)

From: _____ (Name, address and telephone number of secured party)

Name of Debtor(s): _____ (include only if debtor(s) are not an addressee)

(For a public disposition:)

We will sell (or lease or license, as applicable) the _____ (describe collateral) (to the highest qualified bidder) in public as follows:

Day and Date: _____

Time: _____

Place: _____

(For a private disposition:)

We will sell (or lease or license, as applicable) the _____ (describe collateral) privately sometime after _____ (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of \$_____). You may request an accounting by calling us at _____ (telephone number).

(End of Form)

§ 9614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

- (i) the information specified in section 9613(1) (relating to contents and form of notification before disposition of collateral: general);
- (ii) a description of any liability for a deficiency of the person to which the notification is sent;

(iii) a telephone number from which the amount which must be paid to the secured party to redeem the collateral under section 9623 (relating to right to redeem collateral) is available; and

(iv) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

_____ (Name and address of secured party)

_____ (Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

_____ (Name and address of any obligor who is also a debtor)

Subject: _____ (Identification of transaction)

We have your _____ (describe collateral) because you broke promises in our agreement.

(For a public disposition:)

We will sell _____ (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____.

You may attend the sale and bring bidders if you want.

(For a private disposition:)

We will sell _____ (describe collateral) at private sale sometime after _____ (date). A sale could include a lease or license. The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money unless we must pay it to someone else. You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at _____ (telephone number). If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at _____ (telephone number) (or write us at _____ (secured party's address)) and request a written explanation. (We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.) If you need more information about the sale, call us at _____ (telephone number) (or write us at

_____ (secured party's address)). We are sending this notice to the following other people who have an interest in _____ (describe collateral) or who owe money under your agreement: _____ (Names of all other debtors and obligors, if any)

(End of Form)

(4) A notification in the form of paragraph (3) is sufficient even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient even if it includes errors in information not required by paragraph (1) unless the error is misleading with respect to rights arising under this division.

(6) If a notification under this section is not in the form of paragraph (3), law other than this division determines the effect of including information not required by paragraph (1).

§ 9615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) Application of proceeds.—A secured party shall apply or pay over for application the cash proceeds of disposition under section 9610 (relating to disposition of collateral after default) in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing and disposing and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party.

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor.

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest.—If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) Application of noncash proceeds.—A secured party need not apply or pay over for application noncash proceeds of disposition under section 9610 unless the failure to do so would be commercially unreasonable. A

secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured.—If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment.—If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party.—The surplus or deficiency following a disposition is calculated based on the amount of proceeds which would have been realized in a disposition complying with this chapter to a transferee other than the secured party, a person related to the secured party or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds which a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party.—A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien which is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

§ 9616. Explanation of calculation of surplus or deficiency.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Explanation.” A writing which:

(1) states the amount of the surplus or deficiency;

(2) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(3) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and

(4) provides a telephone number or mailing address from which additional information concerning the transaction is available.

“Request.” A record:

(1) authenticated by a debtor or consumer obligor;

(2) requesting that the recipient provide an explanation; and

(3) sent after disposition of the collateral under section 9610 (relating to disposition of collateral after default).

(b) Explanation of calculation.—In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 9615 (relating to application of proceeds of disposition; liability for deficiency and right to surplus), the secured party shall comply with one of the following paragraphs:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(i) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(ii) within 14 days after receipt of a request.

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party’s right to a deficiency.

(c) Required information.—To comply with paragraph (2) of the definition of the term “explanation” in subsection (a), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(i) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(ii) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition.

(2) The amount of proceeds of the disposition.

(3) The aggregate amount of the obligations after deducting the amount of proceeds.

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral and attorney fees secured by the collateral which are known to the secured party and relate to the current disposition.

(5) The amount, in the aggregate or by type and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1).

(6) The amount of the surplus or deficiency.

(d) Substantial compliance.—A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient even if it includes minor errors which are not seriously misleading.

(e) Charges for responses.—A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

§ 9617. Rights of transferee of collateral.

(a) Effects of disposition.—A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee.—A transferee that acts in good faith takes free of the rights and interests described in subsection (a) even if the secured party fails to comply with this division or the requirements of any judicial proceeding.

(c) Rights of other transferee.—If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien.

§ 9618. Rights and duties of certain secondary obligors.

(a) Rights and duties of secondary obligor.—A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer or subrogation.—An assignment, transfer or subrogation described in subsection (a):

(1) is not a disposition of collateral under section 9610 (relating to disposition of collateral after default); and

(2) relieves the secured party of further duties under this division.

§ 9619. Transfer of record or legal title.

(a) Transfer statement.—As used in this section, the term “transfer statement” means a record authenticated by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its postdefault remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor and transferee.

(b) Effect of transfer statement.—A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party’s duties.—A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this division and does not of itself relieve the secured party of its duties under this division.

§ 9620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Conditions to acceptance in satisfaction.—Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if all of the following paragraphs apply:

(1) The debtor consents to the acceptance under subsection (c).

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(i) a person to which the secured party was required to send a proposal under section 9621 (relating to notification of proposal to accept collateral); or

(ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest which is the subject of the proposal.

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 9624 (relating to waiver).

(b) Purported acceptance ineffective.—A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) the conditions of subsection (a) are met.

(c) Debtor's consent.—For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default.

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(i) sends to the debtor after default a proposal which is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) Effectiveness of notification.—To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to section 9621, within 20 days after notification was sent to that person.

(2) In other cases:

(i) within 20 days after the last notification was sent pursuant to section 9621; or

(ii) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) Mandatory disposition of consumer goods.—A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 9610 (relating to disposition of collateral after default) within the time specified in subsection (f) if:

(1) 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60% of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement.—To comply with subsection (e), the secured party shall dispose of the collateral:

- (1) within 90 days after taking possession; or
- (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction.—In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

§ 9621. Notification of proposal to accept collateral.

(a) Persons to which proposal to be sent.—A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to all of the following:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral.

(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement which:

- (i) identified the collateral;
- (ii) was indexed under the debtor's name as of that date; and
- (iii) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date.

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in section 9311(a) (relating to security interest subject to other law).

(b) Proposal to be sent to secondary obligor in partial satisfaction.—A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

§ 9622. Effect of acceptance of collateral.

(a) Effect of acceptance.—A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- (1) discharges the obligation to the extent consented to by the debtor;
- (2) transfers to the secured party all of a debtor's rights in the collateral;
- (3) discharges the security interest or agricultural lien which is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (4) terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance.—A subordinate interest is discharged or terminated under subsection (a) even if the secured party fails to comply with this division.

§ 9623. Right to redeem collateral.

(a) Persons that may redeem.—A debtor, any secondary obligor or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption.—To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney fees described in section 9615(a)(1) (relating to application of proceeds).

(c) When redemption may occur.—A redemption may occur at any time before a secured party:

(1) has collected collateral under section 9607 (relating to collection and enforcement by secured party);

(2) has disposed of collateral or entered into a contract for its disposition under section 9610 (relating to disposition of collateral after default); or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under section 9622 (relating to effect of acceptance of collateral).

§ 9624. Waiver.

(a) Waiver of disposition notification.—A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 9611 (relating to notification before disposition of collateral) only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition.—A debtor may waive the right to require disposition of collateral under section 9620(e) (relating to mandatory disposition of consumer goods) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right.—Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 9623 (relating to right to redeem collateral) only by an agreement to that effect entered into and authenticated after default.

SUBCHAPTER B NONCOMPLIANCE WITH DIVISION

Sec.

9625. Remedies for secured party's failure to comply with division.

9626. Action in which deficiency or surplus is in issue.

9627. Determination of whether conduct was commercially reasonable.

9628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

§ 9625. Remedies for secured party's failure to comply with division.

(a) **Judicial orders concerning noncompliance.**—If it is established that a secured party is not proceeding in accordance with this division, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.**—Subject to subsections (c), (d) and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this division. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain or increased costs of alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.**—Except as otherwise provided in section 9628 (relating to nonliability and limitation on liability of secured party; liability of secondary obligor):

(1) a person that, at the time of the failure, was a debtor, was an obligor or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this chapter may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time price differential plus 10% of the cash price.

(d) **Recovery when deficiency eliminated or reduced.**—A debtor whose deficiency is eliminated under section 9626 (relating to action in which deficiency or surplus is in issue) may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 9626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this chapter relating to collection, enforcement, disposition or acceptance.

(e) **Statutory damages: noncompliance with specified provisions.**—In addition to any damages recoverable under subsection (b), the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover \$500 from a person that:

(1) fails to comply with section 9208 (relating to additional duties of secured party having control of collateral);

(2) fails to comply with section 9209 (relating to duties of secured party if account debtor has been notified of assignment);

(3) files a record which the person is not entitled to file under section 9509(a) (relating to person entitled to file record);

(4) fails to cause the secured party of record to file or send a termination statement as required by section 9513(a) or (c) (relating to termination statement);

(5) fails to comply with section 9616(b)(1) (relating to explanation of calculation of surplus or deficiency), and the failure is part of a pattern or consistent with a practice of noncompliance; or

(6) fails to comply with section 9616(b)(2).

(f) **Statutory damages: noncompliance with section 9210.**—A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under section 9210. A recipient of a request under section 9210 which never claimed an interest in the collateral or obligations which are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: noncompliance with section 9210.**—If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

§ 9626. Action in which deficiency or surplus is in issue.

(a) **Applicable rules if amount of deficiency or surplus in issue.**—In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this chapter relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this chapter.

(3) Except as otherwise provided in section 9628 (relating to nonliability and limitation on liability of secured party; liability of secondary obligor), if a secured party fails to prove that the collection, enforcement, disposition or acceptance was conducted in accordance with the provisions of this chapter relating to collection, enforcement, disposition or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses and attorney fees exceeds the greater of:

(i) the proceeds of the collection, enforcement, disposition or acceptance; or

(ii) the amount of proceeds which would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this chapter relating to collection, enforcement, disposition or acceptance.

(4) For purposes of paragraph (3)(ii), the amount of proceeds which would have been realized is equal to the sum of the secured obligation, expenses and attorney fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under section 9615(f) (relating to calculation of surplus or deficiency in disposition to person

related to secured party), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices which a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.

(b) Nonconsumer transactions; no inference.—The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

§ 9627. Determination of whether conduct was commercially reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.—The fact that a greater amount could have been obtained by a collection, enforcement, disposition or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition or acceptance was made in a commercially reasonable manner.

(b) Dispositions which are commercially reasonable.—A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) in the usual manner on any recognized market;
- (2) at the price current in any recognized market at the time of the disposition; or
- (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property which was the subject of the disposition.

(c) Approval by court or on behalf of creditors.—A collection, enforcement, disposition or acceptance is commercially reasonable if it has been approved:

- (1) in a judicial proceeding;
- (2) by a bona fide creditors' committee;
- (3) by a representative of creditors; or
- (4) by an assignee for the benefit of creditors.

(d) Approval under subsection (c) not necessary; absence of approval has no effect.—Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition or acceptance is not commercially reasonable.

§ 9628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) Limitation of liability of secured party for noncompliance with division.—Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person and knows how to communicate with the person:

(1) the secured party is not liable to the person or to a secured party or lienholder that has filed a financing statement against the person for failure to comply with this division; and

(2) the secured party's failure to comply with this division does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party.—A secured party is not liable because of its status as secured party to any of the following:

(1) A person that is a debtor or obligor unless the secured party knows:

- (i) that the person is a debtor or obligor;
- (ii) the identity of the person; and
- (iii) how to communicate with the person.

(2) A secured party or lienholder that has filed a financing statement against a person unless the secured party knows:

- (i) that the person is a debtor; and
- (ii) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.—A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired or held; or
- (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages.—A secured party is not liable to any person under section 9625(c)(2) (relating to remedies for secured party's failure to comply with division) for its failure to comply with section 9616 (relating to explanation of calculation of surplus or deficiency).

(e) Limitation of multiple liability for statutory damages.—A secured party is not liable under section 9625(c)(2) more than once with respect to any one secured obligation.

CHAPTER 97 TRANSITION PROVISIONS

Sec.

9700. Definitions.

9701. Effective date.

9702. Savings clause.

9703. Security interest perfected before effective date.

9704. Security interest unperfected before effective date.

- 9705. Effectiveness of action taken before effective date.
- 9706. When initial financing statement suffices to continue effectiveness of financing statement.
- 9707. Amendment of pre-effective-date financing statement.
- 9708. Persons entitled to file initial financing statement or continuation statement.
- 9709. Priority.
- 9710. Operations of prothonotaries' offices after effective date.

§ 9700. Definitions.

The following words and terms when used in this chapter shall have the meanings given to them in this section:

"Former Division 9." The provisions of this title, other than Division 5 (relating to letters of credit), as in effect before the effective date of Revised Division 9.

"Revised Division 9." The provisions of this title, other than sections 5101 (relating to short title of division) through 5117 (relating to subrogation of issuer, applicant and nominated person), as amended by the Uniform Commercial Code Modernization Act of 2001 and as they may be further amended.

§ 9701. Effective date.

Revised Division 9 takes effect on July 1, 2001.

§ 9702. Savings clause.

(a) Pre-effective-date transactions or liens.—Except as otherwise provided in this chapter, Revised Division 9 applies to a transaction or lien within its scope even if the transaction or lien was entered into or created before the effective date of Revised Division 9.

(b) Continuing validity.—Except as otherwise provided in subsection (c) and sections 9703 (relating to security interest perfected before effective date) through 9709 (relating to priority) of Revised Division 9:

(1) transactions and liens which were not governed by Former Division 9, were validly entered into or created before the effective date of Revised Division 9 and would be subject to Revised Division 9 if they had been entered into or created after the effective date of Revised Division 9 and the rights, duties and interests flowing from those transactions and liens remain valid after the effective date of Revised Division 9; and

(2) transactions and liens may be terminated, completed, consummated and enforced as required or permitted by Revised Division 9 or by the law which otherwise would apply if Revised Division 9 had not taken effect.

(c) Pre-effective-date proceedings.—Revised Division 9 does not affect an action, case or proceeding commenced before the effective date of Revised Division 9.

§ 9703. Security interest perfected before effective date.

(a) Continuing priority over lien creditor: perfection requirements satisfied.—A security interest which is enforceable immediately before the effective date of Revised Division 9 and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under Revised Division 9 if, when Revised Division 9 takes effect, the applicable requirements for enforceability and perfection under Revised Division 9 are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied.—Except as otherwise provided in section 9705 of Revised Division 9 (relating to effectiveness of action taken before effective date), if, immediately before Revised Division 9 takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under Revised Division 9 are not satisfied when Revised Division 9 takes effect, the security interest:

(1) is a perfected security interest for one year after Revised Division 9 takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable under section 9203 of Revised Division 9 (relating to attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites) before the year expires; and

(3) remains perfected thereafter only if the applicable requirements for perfection under Revised Division 9 are satisfied before the year expires.

§ 9704. Security interest unperfected before effective date.

A security interest which is enforceable immediately before Revised Division 9 takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after Revised Division 9 takes effect.

(2) Remains enforceable thereafter if the security interest becomes enforceable under section 9203 of Revised Division 9 (relating to attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites) when Revised Division 9 takes effect or within one year thereafter.

(3) Becomes perfected:

(i) without further action when Revised Division 9 takes effect if the applicable requirements for perfection under Revised Division 9 are satisfied before or at that time; or

(ii) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§ 9705. Effectiveness of action taken before effective date.

(a) Pre-effective-date action; one-year perfection period unless reperfected.—If action, other than the filing of a financing statement, is taken before Revised Division 9 takes effect and the action would have

resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before Revised Division 9 takes effect, the action is effective to perfect a security interest which attaches under Revised Division 9 within one year after Revised Division 9 takes effect. An attached security interest becomes unperfected one year after Revised Division 9 takes effect unless the security interest becomes a perfected security interest under Revised Division 9 before the expiration of that period.

(b) Pre-effective-date filing.—The filing of a financing statement before Revised Division 9 takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Revised Division 9.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection.—Revised Division 9 does not render ineffective an effective financing statement which, before Revised Division 9 takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9103 of Former Division 9 (relating to perfection of security interests in multiple state transactions). However, except as otherwise provided in subsections (d) and (e) and section 9706 of Revised Division 9 (relating to when initial financing statement suffices to continue effectiveness of financing statement), the financing statement ceases to be effective at the earlier of:

- (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

(d) Continuation statement.—The filing of a continuation statement after Revised Division 9 takes effect does not continue the effectiveness of the financing statement filed before Revised Division 9 takes effect. However, upon the timely filing of a continuation statement after Revised Division 9 takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Chapter 93 of Revised Division 9 (relating to perfection and priority), the effectiveness of a financing statement filed in the same office in that jurisdiction before Revised Division 9 takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c)(2) to transmitting utility financing statement.—Subsection (c)(2) applies to a financing statement which, before Revised Division 9 takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9103 of Former Division 9 only to the extent that Chapter 93 of Revised Division 9 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Chapter 95.—A financing statement which includes a financing statement filed before Revised Division 9 takes effect and a continuation statement filed after Revised Division 9 takes effect is effective only to the extent that it satisfies the requirements of Chapter 95 of Revised Division 9 (relating to filing) for an initial financing statement.

§ 9706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement.—The filing of an initial financing statement in the office specified in section 9501 of Revised Division 9 (relating to filing office) continues the effectiveness of a financing statement filed before Revised Division 9 takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under Revised Division 9;

(2) the pre-effective-date financing statement was filed in an office in another state or another office in this Commonwealth; and

(3) the initial financing statement satisfies subsection (c).

(b) Period of continued effectiveness.—The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before Revised Division 9 takes effect, for the period provided in section 9403 of Former Division 9 (relating to what constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer) with respect to a financing statement; and

(2) if the initial financing statement is filed after Revised Division 9 takes effect, for the period provided in section 9515 of Revised Division 9 (relating to duration and effectiveness of financing statement; effect of lapsed financing statement) with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a).—To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Chapter 95 of Revised Division 9 (relating to filing) for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

§ 9707. Amendment of pre-effective-date financing statement.

(a) Pre-effective-date financing statement.—In this section, “pre-effective-date financing statement” means a financing statement filed before Revised Division 9 takes effect.

(b) **Applicable law.**—After Revised Division 9 takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Chapter 93 of Revised Division 9 (relating to perfection and priority). However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: general rule.**—Except as otherwise provided in subsection (d), if the law of this Commonwealth governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after Revised Division 9 takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in section 9501 of Revised Division 9 (relating to filing office);

(2) an amendment is filed in the office specified in section 9501 of Revised Division 9 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9706(c) of Revised Division 9 (relating to when initial financing statement suffices to continue effectiveness of financing statement); or

(3) an initial financing statement that provides the information as amended and satisfies section 9706(c) of Revised Division 9 is filed in the office specified in section 9501 of Revised Division 9.

(d) **Method of amending: continuation.**—If the law of this Commonwealth governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 9705(d) and (f) of Revised Division 9 (relating to effectiveness of action taken before effective date) or section 9706 of Revised Division 9.

(e) **Methods of amending: additional termination rule.**—Whether or not the law of this Commonwealth governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this Commonwealth may be terminated after Revised Division 9 takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed unless one or both of the following conditions apply:

(1) An initial financing statement that satisfies section 9706(c) of Revised Division 9 has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Chapter 93 of Revised Division 9 as the office in which to file a financing statement.

(2) The pre-effective-date financing statement is filed in the office of a prothonotary of a county of this Commonwealth.

§ 9708. Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this chapter if all of the following paragraphs apply:

- (1) The secured party of record authorizes the filing.
- (2) The filing is necessary under this chapter:
 - (i) to continue the effectiveness of a financing statement filed before Revised Division 9 takes effect; or
 - (ii) to perfect or continue the perfection of a security interest.

§ 9709. Priority.

(a) Law governing priority.—Revised Division 9 determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before Revised Division 9 takes effect, Former Division 9 determines priority.

(b) Priority if security interest becomes enforceable under section 9203 of Revised Division 9.—For purposes of section 9322(a) of Revised Division 9 (relating to general priority rules), the priority of a security interest which becomes enforceable under section 9203 of Revised Division 9 (relating to attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites) dates from the time Revised Division 9 takes effect if the security interest is perfected under Revised Division 9 by the filing of a financing statement before Revised Division 9 takes effect which financing statement would not have been effective to perfect the security interest under Former Division 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

§ 9710. Operations of prothonotaries' offices after effective date.

(a) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Former Division 9 records." The following records:

(1) Financing statements and other records that have been filed in a prothonotary's office pursuant to Former Division 9 before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained as of June 30, 2001, by the prothonotary's office for financing statements and other records filed in the prothonotary's office before July 1, 2001.

(2) The index as of June 30, 2001.

The term does not include records presented to a prothonotary's office for filing after June 30, 2001, whether or not the records relate to financing statements filed in the prothonotary's office before July 1, 2001.

"Prothonotary's office." The office of a prothonotary of a county of this Commonwealth.

(b) No records to be accepted after June 30, 2001.—A prothonotary's office must not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the prothonotary's office before July 1, 2001.

(c) Maintenance of Former Division 9 records.—Until July 1, 2008, each prothonotary's office must maintain all Former Division 9 records in accordance with Former Division 9. A Former Division 9 record that is not reflected on the index maintained at June 30, 2001, by the prothonotary's office must be processed and indexed and reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than July 30, 2001.

(d) Response to information requests.—Until June 30, 2008, each prothonotary's office shall respond to requests for information with respect to Former Division 9 records relating to a debtor and issue certificates in accordance with Former Division 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to Former Division 9 records must be the fees in effect under Former Division 9 on June 30, 2001, unless a different fee is established by regulation issued by the Department of State pursuant to section 9525 of Revised Division 9 (relating to fees).

(e) Removal and destruction of Former Division 9 records.—After June 30, 2008, each prothonotary's office may remove and destroy, in accordance with any then applicable record retention law of this Commonwealth, all Former Division 9 records, including the related index.

Section 17. The heading of Subchapter C of Chapter 1 of Title 15 is amended to read:

SUBCHAPTER C
CORPORATION BUREAU AND UCC FEES

Section 18. Section 151(b) of Title 15 is amended to read:

§ 151. Short title and application of subchapter.

* * *

(b) Application.—This subchapter contains an enumeration of fees to be charged by the Corporation Bureau of the [Department of State] *department* for services performed under this title or any other provision of law relating to corporations or associations and under Titles 13 (relating to commercial code), 17 (relating to credit unions) and 54 (relating to names)[, and, except as otherwise provided by law, by local filing officers under Title 13].

Section 18.1. Section 153(a) introductory paragraph and (8) of Title 15 is amended and the section is amended by adding a subsection to read:

§ 153. Fee schedule.

(a) General rule.—The fees of the Corporation Bureau of the [Department of State] *department*, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, [and of county filing officers under Title 13 (relating to commercial code),] shall be as follows:

* * *

(8) Uniform Commercial Code[:]

As provided in 13 Pa.C.S. § 9525 (relating to fees).

- [(i) Financing statement - per debtor name:**
 - (A) State fee 12
 - (B) County fee 48
- (ii) Each ancillary transaction:**
 - (A) State fee 12
 - (B) County fee 48
- (iii) Search - per debtor name:**
 - (A) State fee 12
 - (B) County fee 48
- (iv) Additional fee for each financing statement found and for each statement of assignment reported therein:**
 - (A) State fee 1
 - (B) County fee 4
- (v) For each financing statement or ancillary transaction not filed on standard forms approved by the Department of State, in addition to the fee provided above, there shall be charged a per filing fee of:**
 - (A) State fee 28
 - (B) County fee 112
- (vi) Seventy-five percent of the county fees collected pursuant to subparagraphs (i) through (v) shall be payable to the Commonwealth and shall be deposited in the General Fund.**
- (vii) Beginning on January 1, 1994, and each January 1 thereafter, the county fees under paragraph (8) shall be increased by the percentage of increase in the Consumer Price Index for Urban Workers for the immediate preceding calendar year which shall be published in the Pennsylvania Bulletin annually by the Supreme Court on or before the preceding November 30. This subparagraph shall expire January 1, 2001.]**

(d) Restriction.—UCC Revenue received by a county recorder of deeds under 13 Pa.C.S. § 9525 (relating to fees) after June 30, 2001, shall be restricted for use by the county recorder of deeds and the county prothonotary. The revenue shall be credited to the offices of the county recorder of deeds and the county prothonotary on the basis of the amount collected in each office in calendar year 2000, excluding any amounts paid to the Commonwealth. Revenue received in excess of the total amount received by each office during the year 2000, excluding amounts paid to the Commonwealth, shall be distributed pro rata to the county recorder of deeds and the county prothonotary. In a county without a recorder of deeds or a prothonotary, the provisions of this subsection shall apply to the equivalent county officials.

Section 18.2. Sections 154(a) and 155(a) of Title 15 are amended to read:

§ 154. Enforcement and collection.

(a) General rule.—

(1) The [Department of State] *department* shall not be required to receive or file any document or paper unless the same shall be accompanied by the proper fee, but the department may in its discretion permit the filing of any document or paper without first requiring payment of the fee required by this subchapter when satisfied that the fee will be paid promptly. If any such fee is not paid in the manner and within the time prescribed by regulation of the department, the filing to which such fee relates shall become void.

(2) *With respect to filings under 13 Pa.C.S. Div. 9 (relating to secured transactions), paragraph (1) is subject to 13 Pa.C.S. §§ 9516 (relating to what constitutes filing; effectiveness of filing) and 9520 (relating to acceptance and refusal to accept record).*

* * *

§ 155. Disposition of funds.

(a) Establishment of restricted account.—There is hereby established in the General Fund a restricted account to be known as the Corporation Bureau Restricted Account. This account shall receive 30% of the amount received by the [Department of State] *department* under this subchapter *except for the fees collected under 13 Pa.C.S. § 9525(a)(1)(ii) (relating to fees). This account shall receive 5% of the amount received by the department under section 9525(a)(1)(ii).* The balance of the amount received by the [Department of State] *department* under this subchapter shall be deposited in the General Fund. Funds in the Corporation Bureau Restricted Account shall be used solely for the operation of the Corporation Bureau in the Department of State and for its modernization as may be required for improved operations of the bureau.

* * *

Section 19. Section 5323(b) of Title 30 is amended to read:

§ 5323. Content and effect of certificate of title.

* * *

(b) Certificate as evidence and notice.—A certificate of title issued by the commission is prima facie evidence of the facts appearing on the certificate. [The] *Except as otherwise provided in 13 Pa.C.S. §§ 9311(d) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties), 9315(c) and (d) (relating to secured party's right on disposition of collateral and in proceeds) and 9316(d) and (e) (relating to continued perfection of security interest following change in governing law),* the certificate shall be adequate notice to the Commonwealth, creditors, subsequent lienholders and purchasers that a lien against the boat exists.

Section 20. Section 5327 of Title 30 is amended by adding a paragraph to read:

§ 5327. Fees.

The following fees shall be due:

* * *

(6) The fee for continuing the effectiveness of perfection of a security interest shall be \$5.

Section 21. Section 1725(c)(2)(ix) of Title 42 is amended to read:

§ 1725. Establishment of fees and charges.

* * *

(c) Counties of the first class.—

* * *

(2) The fees to be received by the Prothonotary of the Trial Division of the Court of Common Pleas and as clerk of the Family Division of said court in counties of the first class shall be as follows:

* * *

(ix) [Financing statements - U.C.C.'s:

The filing of a U.C.C.-1 statement or any initial filing under the] Uniform Commercial Code[.

\$50.00

Includes continuation statement and termination.] as provided in 13 Pa.C.S. § 9525 (relating to fees).

* * *

Section 22. Section 2812(d)(1) of Title 66 is amended to read:

§ 2812. Approval of transition bonds.

* * *

(d) Security interests in intangible transition property.—

(1) Neither intangible transition property nor any right, title or interest of a utility or assignee described in paragraph (1) of the definition of “intangible transition property” in subsection (g), whether before or after the issuance of the qualified rate order, shall constitute “an account” or “general intangibles” under 13 Pa.C.S. [§ 9106 (relating to definitions: “account”; “general intangibles”)] § 9102 (relating to definitions and index of definitions) nor shall any such right, title or interest pertaining to a qualified rate order, including the associated intangible transition property and any revenues, collections, claims, payments, money or proceeds of or arising from intangible transition charges pursuant to such order, be deemed proceeds of any right or interest other than in the order and the intangible transition property arising from the order.

* * *

Section 23. Sections 1131(3) and 1132 of Title 75 are amended to read:

§ 1131. Applicability of subchapter.

This subchapter does not apply to or affect:

* * *

(3) A security interest in a vehicle [created by a manufacturer or dealer who holds the vehicle for sale.] which is inventory held for sale

or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind.

* * *

[§ 1132. Perfection of security interest.

(a) **Validity of unperfected interest.**—Unless perfected as provided in this subchapter or excepted by section 1131 (relating to applicability of subchapter), a security interest in a vehicle of a type for which a certificate of title is required is not valid against any person as to whose rights an unperfected security interest is subordinate under the provisions of Title 13 (relating to commercial code).

(b) **Method of perfection.**—A security interest is perfected at the time an application for a certificate of title is received or date stamped by the department. In order to obtain such notation the lienholder shall deliver to the department the existing certificate of title, if any; an application for a certificate of title upon a form prescribed by the department containing the name and address of the lienholder; and any other information regarding the security interest as may be reasonably required and the required fee.

(c) **Prior security interest in vehicle from another jurisdiction.**—If a vehicle is subject to a security interest when brought into this Commonwealth, the validity of the security interest is determined by the law of the jurisdiction where the vehicle was located when the security interest attached subject to the following:

(1) If the parties understood at the time the security interest attached that the vehicle would be kept in this Commonwealth and it was brought into this Commonwealth within 30 days thereafter for purposes other than transportation through this Commonwealth, the validity of the security interest in this Commonwealth is determined by the law of this Commonwealth.

(2) If the security interest was perfected under the law of the jurisdiction where the vehicle was located when the security interest attached, the following rules apply:

(i) If the name of the lienholder is shown on an existing certificate of title issued by the jurisdiction, the security interest continues perfected in this Commonwealth.

(ii) If the name of the lienholder is not shown on an existing certificate of title issued by that jurisdiction, the security interest continues perfected in this Commonwealth for four months after a first certificate of title of the vehicle is issued in this Commonwealth, and, 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 which case perfection dates from the time of perfection in this Commonwealth.

(3) If the security interest was not perfected under the law of the jurisdiction where the vehicle was located when the security interest attached, it may be perfected in this Commonwealth in which case perfection dates from the time of perfection in this Commonwealth.

(4) A security interest may be perfected under paragraph (2)(ii) or paragraph (3) either as provided in subsection (b) or by the lienholder delivering to the department a notice of security interest in the form the department prescribes together with the required fee.]

Section 23.1. Title 75 is amended by adding a section to read:

§ 1132.1. Perfection of a security interest in a vehicle.

(a) *Perfection.*—A security interest in a vehicle titled in this Commonwealth is perfected at the time the department receives all of the following:

(1) A completed application specifying the lienholder's name and address.

(2) An amount equal to or greater than the fee required by section 1953 (relating to security interest).

(3) The manufacturer's statement of origin or the existing certificate of title for the vehicle.

(b) *Duty of a lienholder.*—If an additional security interest in a vehicle titled in this Commonwealth is being created by the owner of the vehicle and the certificate of title is in the possession of a lienholder, the lienholder shall, at the request of the owner, deliver the certificate of title to the person perfecting the security interest in the vehicle. Upon receipt of the certificate of title, the person perfecting the security interest in the vehicle shall deliver the certificate of title to the department in accordance with subsection (a).

(c) *Work identification number.*—Upon receipt of items required in subsection (a), the department shall assign or place a work identification number on each of the items. The first two numbers in the work identification number shall indicate the year in which the items were received. The next three numbers in the work identification number shall indicate the day of the year the items were received. The date indicated in the work identification number shall constitute conclusive evidence of the date of receipt and the date of perfection.

(d) *Delivery of certificate of title.*—Upon perfection of a security interest in a vehicle, the department shall issue a certificate of title with the names of the first two lienholders and indicate the number of additional lienholders existing at that time. The department shall mail the certificate of title to the first lienholder named in the certificate of title.

Section 23.2. Sections 1133, 1134, 1135(a)(2), 1137 and 1138 of Title 75 are amended to read:

[§ 1133. Creation of security interest for titled vehicle.

(a) **Application by owner.**—If an owner creates a security interest in a vehicle for which a certificate of title has been issued by the Commonwealth, the owner shall immediately execute an application on a form prescribed by the department, naming the lienholder on the certificate, showing the name and address of the lienholder and the date of the security agreement. The certificate of title, together with the application and the required fee, shall be mailed or delivered to the department.

(b) **Where certificate is in possession of lienholder.**—Upon request of the owner or subordinate lienholder, a lienholder in possession of the certificate of title shall mail or deliver the certificate to the department or, upon receipt from the subordinate lienholder of the application of the owner and the required fee, mail or deliver them to the department with the certificate. The delivery of the certificate does not affect the rights of the first lienholder under his security agreement.

(c) **Endorsement and delivery of certificate.**—Upon receipt of the certificate of title, application and the required fees, the department shall endorse on the existing certificate of title, or on a new certificate which it then issues, the name and address of all secured parties and shall mail the certificate of title to the first lienholder named in the certificate.]

§ 1134. Assignment by lienholder of security interest.

(a) **General rule.**—A lienholder may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner or the validity *or perfection* of the security interest but any person without notice of the assignment is protected in dealing with the lienholder as the holder of the security interest and the lienholder remains liable for any obligations as lienholder *under this chapter* until the assignee is named as lienholder on the certificate *of title*.

(b) **Duty of assignee.**—The assignee shall deliver to the department the certificate of title and an assignment by the lienholder named in the certificate of title on a form prescribed and furnished by the department and accompanied by the required fee. *Failure of the assignee to make the delivery shall not affect the validity or perfection of the security interest.*

(c) **Division 9.**—*The provisions of this subchapter are subject to 13 Pa.C.S. § 9308(e) (relating to when security interest or agricultural lien is perfected; continuity of perfection).*

§ 1135. Satisfaction of security interest.

(a) **Absence of subsequent liens.**—Where there are no subsequent liens upon a vehicle, the following rules apply upon the satisfaction of a security interest in the vehicle:

* * *

(2) The owner may mail or deliver the certificate of title with proper evidence of satisfaction of the security interest to the department which shall issue a corrected certificate of title without a statement of liens or

encumbrances. The corrected certificate of title may also be issued when the outstanding certificate *of title* cannot be returned and proper evidence is produced that all recorded security interests have been satisfied.

* * *

§ 1137. Subchapter exclusive for perfecting security interest.

The method provided in this subchapter for perfecting and giving notice of security interests is exclusive[.], *except as otherwise provided in 13 Pa.C.S. §§ 9315 (relating to secured party's rights on disposition of collateral and in proceeds) and 9316(d) and (e) (relating to continued perfection of security interest following change in governing law).*

§ 1138. Duration of [*lien recorded on certificate of title*] *perfection*.

(a) General rule.—[A] *Perfection of a* security interest [*recorded on a certificate of title*] is effective for a period of 15 years in the case of a mobile home or emergency vehicle, eight years in the case of a truck tractor or trailer weighing in excess of 10,000 pounds and six years in all other cases, *in each case* dating from the time of perfection as provided for in this subchapter *and subject to renewal as provided in subsection (b).*

(b) Renewal [*of lien*].—The effectiveness of [*a lien recorded on the certificate of title*] *perfection* lapses on the expiration of the periods specified in subsection (a) unless a [*continuation statement*] *renewal form* is filed within the six months immediately preceding expiration. [*The lien*] *Upon the timely filing of a renewal form, the effectiveness of perfection continues for a period of three years, commencing on the date on which perfection would have lapsed in the absence of the filing. Perfection may be renewed for as many three-year periods as may be necessary by the holder of the security interest upon a form furnished by the department, signed by the secured party and accompanied by the fee provided in this title.*

(c) Corrected certificate when [*lien*] *perfection* expires.—A corrected certificate of title without a statement of liens or encumbrances shall be issued by the department, upon the request of the owner, when *perfection of* the security interests recorded on the certificate of title have expired.

Section 24. Title 75 is amended by adding a section to read:

§ 1140. *Cancellation of certificate of title or ownership for mobile home.*

(a) General rule.—*The department may cancel a certificate of title for a mobile home affixed to real property. The person requesting the cancellation shall submit to the department an application for cancellation and the certificate of title. The application must be on a form prescribed by the department. Upon cancellation, the ownership interest in the mobile home, together with all liens and encumbrances thereon, shall be transferred to and shall encumber the real property to which the mobile home has become affixed.*

(b) *New certificate of title after cancellation.—If the department has previously canceled a certificate of title to a mobile home under*

subsection (a), the owner of the mobile home shall submit to the department all of the following:

(1) An application for a certificate of title on the forms prescribed by the department.

(2) A certificate from an attorney or title company that there are no mortgages, judgments or other liens of record against the mobile home or, if there is a lien, a certified copy of a release of lien executed by the lienholder and issued by the recorder of deeds or prothonotary, as appropriate.

(3) Such other information as the department shall require.

Section 25. Section 7712(c) of Title 75 is amended by adding a paragraph to read:

§ 7712. Registration of snowmobiles and registration and issuance of certificates of title for ATV's.

* * *

(c) Fees.—Fees for registration of snowmobiles and registration and issuance of certificates of title for ATV's to be collected by the department under this chapter are as follows:

* * *

(7) Recording the name of a secured party on a certificate of title, \$5.

* * *

Section 26. Sections 7712.5(a) and 7712.7(c) of Title 75 are amended to read:

§ 7712.5. Issuance of new certificate following transfer.

(a) Voluntary transfer.—The department, upon receipt of a properly assigned certificate of title with an application for a new certificate of title, the required fee and any other required documents and articles, shall issue a new certificate of title in the name of the transferee as owner and mail it to the first [lienholder] **secured party** named in the certificate or, if none, to the owner.

* * *

§ 7712.7. Application for certificate of title by agent.

* * *

(c) Persons authorized to hold certificate.—No person shall receive, obtain or hold a certificate of title recorded in the name of another person for the other person who is not in the regular employ of, or not a member of the family of, the other person, unless the person receiving, obtaining or holding the certificate of title has a valid undischarged [lien] **security interest** recorded in the department against the ATV represented by the certificate of title.

* * *

Section 27. Title 75 is amended by adding sections to read:

§ 7712.8. **Perfection of security interest in an ATV.**

(a) Applicability of section.—*Except as otherwise provided in 13 Pa.C.S. §§ 9311(d) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties), 9315(c) and (d) (relating to secured party's rights on disposition of collateral and in proceeds) and 9316(d) and (e) (relating to continued perfection of security interest following change in governing law), this section provides the exclusive method of perfecting a security interest in an ATV for which a certificate of title is required under this subchapter.*

(b) ATV's without Pennsylvania certificate of title.—*If an owner creates a security interest in an ATV for which a certificate of title has not been issued by the department, the owner shall, at the request of the secured party, promptly execute an application for a certificate of title on a form prescribed by the department showing the name and address of the secured party. The owner shall tender the application, the existing certificate of title, if any, and the required fee to the department. A security interest in an ATV is perfected at the time that such application, existing certificate of title, if any, and required fee are received by the department.*

(c) ATV's with Pennsylvania certificate of title.—*If an owner creates a security interest in an ATV for which a certificate of title has been issued by the department, the owner shall, at the request of the secured party, promptly execute an application on a form prescribed by the department showing the name and address of the secured party. The owner shall tender the certificate of title, together with the application and the required fee, to the department. A security interest in an ATV is perfected at the time such application, certificate of title and required fee are received by the department.*

(d) Certificate of title in possession of secured party.—*Upon request of the owner or a subordinate secured party, a secured party in possession of the certificate of title shall mail or deliver the certificate to the department or, upon receipt from the subordinate secured party of the application of the owner and the required fee, shall mail or deliver them to the department with the certificate of title. The delivery of the certificate to the department does not affect the rights of the first secured party under his security agreement.*

(e) Indorsement and delivery of certificate of title.—*Upon receipt of the application, existing certificate of title, if any, and required fee, the department shall indorse on the existing certificate of title or the new certificate that it issues the names and addresses of all secured parties and shall mail the certificate of title to the first secured party named in the certificate.*

§ 7712.9. Satisfaction of security interest.

(a) Satisfaction of secured obligation.—*Unless otherwise agreed by the owner, within 15 days of the satisfaction of the obligation secured by a security interest in an ATV, the secured party shall mail or deliver the*

certificate of title to the owner or to the department with a statement of satisfaction signed by the secured party. Upon receipt of the certificate of title and statement of satisfaction, the department shall issue a corrected certificate of title without an indorsement of such secured party's security interest and mail the same to the holder of the first remaining security interest or, if there is no remaining security interest, the owner.

(b) Satisfaction of subordinate secured obligation.—If the certificate of title for an ATV is in the possession of a prior secured party, the subordinate secured party whose obligation is satisfied shall mail or deliver to the owner a signed statement of satisfaction in accordance with subsection (a). Upon request of the owner and receipt of the statement of satisfaction, the secured party in possession of the certificate of title shall mail or deliver the certificate of title, together with the statement of satisfaction, to the department. Upon receipt of the certificate of title and evidence of satisfaction, the department shall issue a corrected certificate of title without an indorsement of the satisfied security interest and mail the same to the prior secured party.

(c) Penalties.—Any person violating the provisions of this section commits of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$50.

§ 7712.10. Release of security interest.

A secured party that releases a security interest in an ATV shall mail or deliver the certificate of title to the owner with a statement of release signed by the secured party, or the secured party may apply to the department for a corrected certificate of title to be issued in the name of the owner. Upon receipt of the certificate of title and statement of release, the department shall issue a corrected certificate of title without an indorsement of such secured party and mail the same to the holder of the first remaining security interest or, if there is no remaining secured party, the owner.

§ 7712.11. Effectiveness of security interests.

A security interest perfected in accordance with this subchapter is perfected until the secured party provides written evidence of satisfaction in accordance with section 7712.9 (relating to satisfaction of security interest) or release in accordance with section 7712.10 (relating to release of security interest) and the indorsement of the security interest is removed by the department pursuant to section 7712.9 or 7712.10.

§ 7712.12. Assignment by secured party of security interest.

(a) General rule.—A secured party may assign, absolutely or otherwise, his security interest in an ATV to a person other than the owner without affecting the interest of the owner or the validity or perfection of the security interest.

(b) Duty of assignee.—An assignee who desires to become the secured party of record shall mail or deliver to the department the certificate of title and an assignment by the secured party named on the certificate of

title on a form prescribed by the department accompanied by the required fee. Upon receipt of the certificate of title, assignment and fee, the department shall issue a corrected certificate of title naming the assignee as secured party.

(c) Division 9.—The provisions of this section are subject to 13 Pa.C.S. § 9308(e) (relating to when security interest or agricultural lien is perfected; continuity of perfection).

§ 7712.13. Exemptions.

The provisions of this subchapter relating to procedures for perfecting, assigning and satisfying security interests do not apply to:

- (1) a lien given by statute or rule of law to a supplier of services or materials for the ATV;*
- (2) a lien given by statute to the United States, the Commonwealth or any political subdivision of the Commonwealth;*
- (3) a security interest in an ATV described in 13 Pa.C.S. § 9311(d) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties); or*
- (4) an ATV for which a certificate of title is not required under this subchapter.*

Section 28. The following transitional provisions apply only to the addition of 13 Pa.C.S. §§ 5101 through 5117:

(1) A transaction arising out of or associated with a letter of credit that was issued before the effective date of this act and the rights, obligations and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated or enforced under that statute or other law.

(2) This act applies to a letter of credit that is issued on or after the effective date of this act. This act does not apply to a transaction, event, obligation or duty arising out of or associated with a letter of credit that was issued before the effective date of this act.

Section 29. (a) The following acts and parts of acts are repealed to the extent specified:

Act of April 5, 1853 (P.L.295, No.198), entitled "An act to authorize mortgages of Coal Leases in Schuylkill county," absolutely.

Act of March 22, 1861 (P.L.185, No.181), entitled "A supplement to an act to authorize Mortgages of Coal Leases in Schuylkill county, approved the fifth day of April, Anno Domini one thousand eight hundred and fifty-three," absolutely.

Act of April 12, 1872 (P.L.60, No.47), entitled "An act to regulate the execution and transfer of notes given for patent rights," absolutely.

Penultimate paragraph setting fees in section 1 of the act of June 12, 1919 (P.L.476, No.240), referred to as the Second Class County Recorder of Deeds Fee Law, insofar as inconsistent with 13 Pa.C.S. § 9525.

Act of March 28, 1931 (P.L.11, No.9), entitled "An act to enable the farmers of the Commonwealth of Pennsylvania, as an emergency measure, to borrow money from the United States of America under the provisions of the Joint Resolution of Congress, approved the twentieth day of December one thousand nine hundred and thirty (Public Resolution, Number one hundred twelve, Seventy-first Congress), as amended, for the relief of farmers in the drought and storm-stricken areas of the United States; authorizing the execution and recording of chattel mortgages unto the United States of America on crops already planted or to be planted; and designating the nature of the lien operation and effect of such mortgages," absolutely.

Act of July 15, 1936 (1st Sp.Sess., P.L.47, No.22), entitled "An act to enable persons, associations, partnerships, and corporations to borrow money and secure the repayment thereof by the execution and recordation of chattel mortgages on any chattels of any kind or description; providing for bonds with confessions of judgments; regulating the assignment and release of such mortgages; and designating the operation and effect of the lien of such mortgages," absolutely.

Tenth paragraph setting fees in section 1 of the act of April 20, 1949 (P.L.644, No.143), entitled "An act to regulate and establish the fees to be charged and collected by the recorders of deeds in counties of the first class," insofar as inconsistent with 13 Pa.C.S. § 9525.

Act of January 24, 1956 (1955 P.L.931, No.288), entitled "An act relating to chattel mortgages executed and filed prior to July one, one thousand nine hundred fifty-four, regulating the assignment, release, satisfaction and extension of the lien of mortgages, and the filing, indexing and docketing thereof in prothonotaries' offices; prescribing methods of foreclosure; defining defaults and violations; prescribing prothonotaries' fees; and fixing penalties," absolutely.

Act of February 28, 1956 (1955 P.L.1147, No.358), entitled "An act relating to conditional sales made prior to July one, one thousand nine hundred fifty-four," absolutely.

Act of July 25, 1977 (P.L.95, No.35), known as the Mobile Home Titling Act, absolutely.

Section 2(10)(i) and (ii) and (23)(iii) and (v) of the act of April 8, 1982 (P.L.303, No.85), known as the Second Class County Prothonotary Fee Act, absolutely.

As much as relates to finance statements, including assignment or release, continuation, secured transaction and termination, and to searches, including financial statements and additional fees for financing statements, of section 1 of the act of April 8, 1982 (P.L.310, No.87), referred to as the Recorder of Deeds Fee Law, insofar as inconsistent with 13 Pa.C.S. § 9525.

(b) All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 30. This act shall take effect as follows:

- (1) The following provisions shall take effect immediately:
 - (i) The addition of 13 Pa.C.S. § 9525(d).
 - (ii) This section.
- (2) The addition of 15 Pa.C.S. § 153(d) shall take effect in 90 days.
- (3) The remainder of this act shall take effect July 1, 2001.

APPROVED—The 8th day of June, A.D. 2001.

THOMAS J. RIDGE