

ASSEMBLY BILL

No. 1689

Introduced by Assembly Member Weggeland

February 24, 1995

An act to amend and repeal Section 701.040 of the Code of Civil Procedure, to amend and repeal Sections 9501, 9502, and 9504 of the Commercial Code, and to repeal Section 5 of Chapter 1125 of the Statutes of 1990, relating to remedies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1689, as introduced, Weggeland. Remedies: deficiency liability.

Existing law provides that if a secured party under a security agreement is entitled to make collections on collateral, such as accounts receivable and if a security agreement secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed, but only if the secured party in collecting has proceeded in a commercially reasonable manner, or, if not, only to a specified extent, as specified.

Existing law provides that a secured party after default may sell, lease, or dispose of collateral and that if a security interest secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed or otherwise provided in specific statutes, but only if the debtor was given required notice, and the disposition was conducted in good faith and in a commercially reasonable manner. In other cases, the debtor is liable only to a specified extent, and there is no deficiency

liability for consumer indebtedness of \$100,000 or less, or other liability of \$50,000 or less.

Under existing law these provisions would be repealed on January 1, 1996 and other provisions would become operative that would generally provide that the debtor is liable for any deficiency unless otherwise agreed, except as specified.

This bill would delete the language that repeals these provisions and would eliminate the provisions that would become operative January 1, 1996, thereby extending currently operative provisions indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 701.040 of the Code of Civil
2 Procedure, as amended by Section 1 of Chapter 1125 of
3 the Statutes of 1990, is amended to read:

4 701.040. (a) Except as otherwise ordered by the
5 court upon a determination that the judgment creditor's
6 lien has priority over the security interest, if property
7 levied upon is subject to a security interest that attached
8 prior to levy, the property or obligation is subject to
9 enforcement of the security interest without regard to
10 the levy unless the property is in the custody of the
11 levying officer; but, if the execution lien has priority over
12 the security interest, the secured party is liable to the
13 judgment creditor for any proceeds received by the
14 secured party from the property to the extent of the
15 execution lien.

16 (b) After the security interest is satisfied, the secured
17 party shall deliver any excess property, and pay any
18 excess payments or proceeds of property, remaining in
19 the possession of the secured party to the levying officer
20 for the purposes of the levy, as provided in Sections 9502
21 and 9504 of the Commercial Code, unless otherwise
22 ordered by the court or directed by the levying officer.

23 ~~(c) This section shall be repealed on January 1, 1996.~~



1 SEC. 2. Section 701.040 of the Code of Civil
2 Procedure, as added by Section 1.5 Chapter 1125 of the
3 Statutes of 1990, is repealed.

4 ~~701.040. (a) Except as otherwise ordered by the~~
5 ~~court upon a determination that the judgment creditor's~~
6 ~~lien has priority over the security interest, if property~~
7 ~~levied upon is subject to a security interest that attached~~
8 ~~prior to levy, the property or obligation is subject to~~
9 ~~enforcement of the security interest without regard to~~
10 ~~the levy unless the property is in the custody of the~~
11 ~~levying officer; but, if the execution lien has priority over~~
12 ~~the security interest, the secured party is liable to the~~
13 ~~judgment creditor for any proceeds received by the~~
14 ~~secured party from the property to the extent of the~~
15 ~~execution lien.~~

16 ~~(b) After the security interest is satisfied, the secured~~
17 ~~party shall deliver any excess property, and pay any~~
18 ~~excess payments or proceeds of property, remaining in~~
19 ~~the possession of the secured party to the levying officer~~
20 ~~for the purposes of the levy, as provided in Section 9504~~
21 ~~of the Commercial Code, unless otherwise ordered by the~~
22 ~~court or directed by the levying officer.~~

23 SEC. 3. Section 9501 of the Commercial Code, as
24 amended by Section 2 of Chapter 1125 of the Statutes of
25 1990, is amended to read:

26 9501. (1) When a debtor is in default under a security
27 agreement, a secured party has the rights and remedies
28 provided in this chapter and except as limited by
29 subdivision (3) those provided in the security agreement.
30 The secured party may reduce his or her claim to
31 judgment, foreclose or otherwise enforce the security
32 interest by any available judicial procedure. If the
33 collateral is documents the secured party may proceed
34 either as to the documents or as to the goods covered
35 thereby. A secured party in possession has the rights,
36 remedies and duties provided in Section 9207. The rights
37 and remedies referred to in this subdivision are
38 cumulative.



1 (2) After default, the debtor has the rights and
2 remedies provided in this chapter, those provided in the
3 security agreement and those provided in Section 9207.

4 (3) To the extent that they give rights to the debtor
5 and impose duties on the secured party, the rules stated
6 in the subdivisions referred to below may not be waived
7 or varied except as provided with respect to compulsory
8 disposition of collateral (subdivision (3) of Section 9504
9 and Section 9505) and with respect to redemption of
10 collateral (Section 9506) but the parties may by
11 agreement determine the standards by which the
12 fulfillment of these rights and duties is to be measured if
13 such standards are not manifestly unreasonable:

14 (a) Subdivision (2) of Section 9502 and subdivision (2)
15 of Section 9504 insofar as they require accounting for
16 surplus proceeds of collateral and deal with the debtor's
17 liability for any deficiency;

18 (b) Subdivision (3) of Section 9504 and subdivision (1)
19 of Section 9505—~~which~~ *that* deal with disposition of
20 collateral;

21 (c) Subdivision (2) of Section 9505 ~~which~~ *that* deals
22 with acceptance of collateral as discharge of obligation;

23 (d) Section 9506 ~~which~~ *that* deals with redemption of
24 collateral; and

25 (e) Subdivision (1) of Section 9507 ~~which~~ *that* deals
26 with the secured party's liability for failure to comply
27 with this chapter.

28 (4) If an obligation secured by a security interest in
29 personal property or fixtures (Section 9313(1)(a)) is also
30 secured by an interest in real property or an estate
31 therein:

32 (a) The secured party may do any of the following:

33 (i) Proceed, in any sequence, (1) in accordance with
34 the secured party's rights and remedies in respect of real
35 property as to the real property security, and (2) in
36 accordance with this chapter as to the personal property
37 or fixtures.

38 (ii) Proceed in any sequence, as to both some or all of
39 the real property and some or all of the personal property
40 or fixtures in accordance with the secured party's rights



1 and remedies in respect of the real property, by including
2 the portion of the personal property or fixtures selected
3 by the secured party in the judicial or nonjudicial
4 foreclosure of the real property in accordance with the
5 procedures applicable to real property. In proceeding
6 under this subparagraph, (A) no provision of this chapter
7 other than this subparagraph, subparagraph (iii) of
8 paragraph (d), and paragraphs (g) and (h) shall apply to
9 any aspect of the foreclosure; (B) a power of sale under
10 the deed of trust or mortgage shall be exercisable with
11 respect to both the real property and the personal
12 property or fixtures being sold; and (C) the sale may be
13 conducted by the mortgagee under the mortgage or by
14 the trustee under the deed of trust. The secured party
15 shall not be deemed to have elected irrevocably to
16 proceed as to both real property and personal property
17 or fixtures as provided in this subparagraph with respect
18 to any particular property, unless and until that particular
19 property has been actually disposed of pursuant to a
20 unified sale (judicial or nonjudicial) conducted in
21 accordance with the procedures applicable to real
22 property, and then only as to the property so sold.

23 (iii) Proceed, in any sequence, as to part of the
24 personal property or fixtures as provided in subparagraph
25 (i), and as to other of the personal property or fixtures as
26 provided in subparagraph (ii).

27 (b) (i) Except as otherwise provided in paragraph
28 (c), provisions and limitations of any law respecting real
29 property and obligations secured by an interest in real
30 property or an estate therein, including, but not limited
31 to, Section 726 of the Code of Civil Procedure, provisions
32 regarding acceleration or reinstatement of obligations
33 secured by an interest in real property or an estate
34 therein, prohibitions against deficiency judgments,
35 limitations on deficiency judgments based on the value of
36 the collateral, limitations on the right to proceed as to
37 collateral, and requirements that a creditor resort either
38 first or at all to its security, do not in any way apply to
39 either (1) any personal property or fixtures other than
40 personal property or fixtures as to which the secured



1 party has proceeded or is proceeding under
2 subparagraph (ii) of paragraph (a), or (2) the obligation.

3 (ii) Pursuant to, but without limiting subparagraph
4 (i), in the event that an obligation secured by personal
5 property or fixtures would otherwise become
6 unenforceable by reason of Section 726 of the Code of
7 Civil Procedure or any requirement that a creditor resort
8 first to its security, then, notwithstanding that section or
9 any similar requirement, the obligation shall nevertheless
10 remain enforceable to the full extent necessary to permit
11 a secured party to proceed against personal property or
12 fixtures securing the obligation in accordance with the
13 secured party's rights and remedies as permitted under
14 this chapter.

15 (c) (i) Paragraph (b) does not limit the application of
16 Section 580b of the Code of Civil Procedure.

17 (ii) If the secured party commences an action, as
18 defined in Section 22 of the Code of Civil Procedure, and
19 the action seeks a monetary judgment on the debt,
20 paragraph (b) does not prevent the debtor's assertion of
21 any right to require the inclusion in the action of any
22 interest in real property or an estate therein securing the
23 debt. If a monetary judgment on the debt is entered in the
24 action, paragraph (b) does not prevent the debtor's
25 assertion of the subsequent unenforceability of the
26 encumbrance on any interest in real property or an estate
27 therein securing the debt and not included in the action.

28 (iii) Nothing in paragraph (b) shall be construed to
29 excuse compliance with Section 2924c of the Civil Code
30 as a prerequisite to the sale of real property, but that
31 section has no application to the right of a secured party
32 to proceed as to personal property or fixtures except, and
33 then only to the extent that, the secured party is
34 proceeding as to personal property or fixtures in a unified
35 sale as provided in subparagraph (ii) of paragraph (a).

36 (iv) Paragraph (b) does not deprive the debtor of the
37 protection of Section 580d of the Code of Civil Procedure
38 against a deficiency judgment following a sale of the real
39 property collateral pursuant to a power of sale in a deed
40 of trust or mortgage.



1 (v) Paragraph (b) shall not affect, nor shall it
2 determine the applicability or inapplicability of, any law
3 respecting real property or obligations secured in whole
4 or in part by real property with respect to a loan or a
5 credit sale made to any individual primarily for personal,
6 family, or household purposes.

7 (vi) Paragraph (b) does not deprive the debtor of the
8 protection of Section 580a of the Code of Civil Procedure
9 following a sale of real property collateral.

10 (vii) If the secured party violates any statute or rule of
11 law that requires a creditor who holds an obligation
12 secured by an interest in real property or an estate
13 therein to resort first to its security before resorting to any
14 property of the debtor that does not secure the obligation,
15 paragraph (b) does not prevent the debtor's assertion of
16 any right to require correction of the violation, any right
17 of the secured party to correct the violation, or the
18 debtor's assertion of the subsequent unenforceability of
19 the encumbrance on any interest in real property or an
20 estate therein securing the obligation, or the debtor's
21 assertion of the subsequent unenforceability of the
22 obligation except to the extent that the obligation is
23 preserved by subparagraph (ii) of paragraph (b).

24 (d) If the secured party realizes proceeds from the
25 disposition of collateral that is personal property or
26 fixtures, the following provisions shall apply:

27 (i) The disposition of the collateral, the realization of
28 the proceeds, the application of the proceeds, or any one
29 or more of the foregoing shall not operate to cure any
30 nonmonetary default.

31 (ii) The disposition of the collateral, the realization of
32 the proceeds, the application of the proceeds, or any one
33 or more of the foregoing shall not operate to cure any
34 monetary default (although the application of the
35 proceeds shall, to the extent of those proceeds, satisfy the
36 secured obligation) so as to affect in any way the secured
37 party's rights and remedies under this chapter with
38 respect to any remaining personal property or fixtures
39 collateral.

1 (iii) All proceeds so realized shall be applied by the
2 secured party to the secured obligation in accordance
3 with the agreement of the parties and applicable law.

4 (e) An action by the secured party utilizing any
5 available judicial procedure, as provided in subdivision
6 (1), shall in no way be affected by omission of a prayer for
7 a monetary judgment on the debt. Notwithstanding
8 Section 726 of the Code of Civil Procedure, any
9 prohibition against splitting causes of action or any other
10 statute or rule of law, a judicial action ~~which~~ *that* neither
11 seeks nor results in a monetary judgment on the debt shall
12 not preclude a subsequent action seeking a monetary
13 judgment on the debt or any other relief.

14 (f) As used in this subdivision, “monetary judgment on
15 the debt” means a judgment for the recovery from the
16 debtor of all or part of the principal amount of the secured
17 obligation, including, for purposes of this subdivision,
18 contractual interest thereon. “Monetary judgment on the
19 debt” does not include a judgment ~~which~~ *that* provides
20 only for other relief (whether or not that other relief is
21 secured by the collateral), such as one or more forms of
22 nonmonetary relief, and monetary relief ancillary to any
23 of the foregoing, such as attorneys’ fees and costs incurred
24 in seeking the relief.

25 (g) If a secured party fails to comply with the
26 procedures applicable to real property in proceeding as
27 to both real and personal property under subparagraph
28 (ii) of paragraph (a), a purchaser for value of any interest
29 in the real property at judicial or nonjudicial foreclosure
30 proceedings conducted pursuant to subparagraph (ii) of
31 paragraph (a) takes that interest free from any claim or
32 interest of another person, or any defect in title, based
33 upon that noncompliance, unless:

34 (i) The purchaser is the secured party and the failure
35 to comply with this chapter occurred other than in good
36 faith; or

37 (ii) The purchaser is other than the secured party and
38 at the time of sale of the real property at that foreclosure
39 the purchaser had knowledge of the failure to comply



1 with this chapter and that the noncompliance occurred
2 other than in good faith.

3 Even if the purchaser at the foreclosure sale does not
4 take his or her interest free of claims, interests, or title
5 defects based upon that noncompliance with this chapter,
6 a subsequent purchaser for value who acquires an interest
7 in that real property from the purchaser at that
8 foreclosure takes that interest free from any claim or
9 interest of another person, or any defect in title, based
10 upon that noncompliance, unless at the time of acquiring
11 the interest the subsequent purchaser has knowledge of
12 the failure to comply with this chapter and that the
13 noncompliance occurred other than in good faith.

14 (h) If a secured party proceeds by way of a unified sale
15 under subparagraph (ii) of paragraph (a), then, for
16 purposes of applying Section 580a or subdivision (b) of
17 Section 726 of the Code of Civil Procedure to any such
18 unified sale, the personal property or fixtures included in
19 the unified sale shall be deemed to be included in the
20 “real property or other interest sold,” as that term is used
21 in Section 580a or subdivision (b) of Section 726 of the
22 Code of Civil Procedure.

23 (5) When a secured party has reduced his or her claim
24 to judgment the lien of any levy ~~which~~ *that* may be made
25 upon his or her collateral by virtue of any execution based
26 upon the judgment shall relate back to the date of the
27 perfection of the security interest in the collateral. A
28 judicial sale, pursuant to that execution, is a foreclosure of
29 the security interest by judicial procedure within the
30 meaning of this section, and the secured party may
31 purchase at the sale and thereafter hold the collateral free
32 of any other requirements of this division.

33 ~~(6) This section shall be repealed on January 1, 1996.~~

34 SEC. 4. Section 9501 of the Commercial Code, as
35 added by Section 2.5 of Chapter 1125 of the Statutes of
36 1990, is repealed.

37 ~~9501. (1) When a debtor is in default under a security
38 agreement, a secured party has the rights and remedies
39 provided in this chapter and except as limited by
40 subdivision (3) those provided in the security agreement.~~



~~1 The secured party may reduce his or her claim to
2 judgment, foreclose or otherwise enforce the security
3 interest by any available judicial procedure. If the
4 collateral is documents the secured party may proceed
5 either as to the documents or as to the goods covered
6 thereby. A secured party in possession has the rights,
7 remedies and duties provided in Section 9207. The rights
8 and remedies referred to in this subdivision are
9 cumulative.~~

~~10 (2) After default, the debtor has the rights and
11 remedies provided in this chapter, those provided in the
12 security agreement and those provided in Section 9207.~~

~~13 (3) To the extent that they give rights to the debtor
14 and impose duties on the secured party, the rules stated
15 in the subdivisions referred to below may not be waived
16 or varied except as provided with respect to compulsory
17 disposition of collateral (subdivision (3) of Section 9504
18 and Section 9505) and with respect to redemption of
19 collateral (Section 9506) but the parties may by
20 agreement determine the standards by which the
21 fulfillment of these rights and duties is to be measured if
22 such standards are not manifestly unreasonable:~~

~~23 (a) Subdivision (2) of Section 9502 and subdivision (2)
24 of Section 9504 insofar as they require accounting for
25 surplus proceeds of collateral;~~

~~26 (b) Subdivision (3) of Section 9504 and subdivision (1)
27 of Section 9505 which deal with disposition of collateral;~~

~~28 (c) Subdivision (2) of Section 9505 which deals with
29 acceptance of collateral as discharge of obligation;~~

~~30 (d) Section 9506 which deals with redemption of
31 collateral; and~~

~~32 (e) Subdivision (1) of Section 9507 which deals with
33 the secured party's liability for failure to comply with this
34 chapter.~~

~~35 (4) If an obligation secured by a security interest in
36 personal property or fixtures (Section 9313(1)(a)) is also
37 secured by an interest in real property or an estate
38 therein:~~

~~39 (a) The secured party may do any of the following:~~



1 ~~(i) Proceed, in any sequence, (1) in accordance with~~
2 ~~the secured party's rights and remedies in respect of real~~
3 ~~property as to the real property security, and (2) in~~
4 ~~accordance with this chapter as to the personal property~~
5 ~~or fixtures.~~

6 ~~(ii) Proceed in any sequence, as to both some or all of~~
7 ~~the real property and some or all of the personal property~~
8 ~~or fixtures in accordance with the secured party's rights~~
9 ~~and remedies in respect of the real property, by including~~
10 ~~the portion of the personal property or fixtures selected~~
11 ~~by the secured party in the judicial or nonjudicial~~
12 ~~foreclosure of the real property in accordance with the~~
13 ~~procedures applicable to real property. In proceeding~~
14 ~~under this subparagraph, (A) no provision of this chapter~~
15 ~~other than this subparagraph, subparagraph (iii) of~~
16 ~~paragraph (d), and paragraphs (g) and (h) shall apply to~~
17 ~~any aspect of the foreclosure; (B) a power of sale under~~
18 ~~the deed of trust or mortgage shall be exercisable with~~
19 ~~respect to both the real property and the personal~~
20 ~~property or fixtures being sold; and (C) the sale may be~~
21 ~~conducted by the mortgagee under the mortgage or by~~
22 ~~the trustee under the deed of trust. The secured party~~
23 ~~shall not be deemed to have elected irrevocably to~~
24 ~~proceed as to both real property and personal property~~
25 ~~or fixtures as provided in this subparagraph with respect~~
26 ~~to any particular property, unless and until that particular~~
27 ~~property has been actually disposed of pursuant to a~~
28 ~~unified sale (judicial or nonjudicial) conducted in~~
29 ~~accordance with the procedures applicable to real~~
30 ~~property, and then only as to the property so sold.~~

31 ~~(iii) Proceed, in any sequence, as to part of the~~
32 ~~personal property or fixtures as provided in subparagraph~~
33 ~~(i), and as to other of the personal property or fixtures as~~
34 ~~provided in subparagraph (ii).~~

35 ~~(b) (i) Except as otherwise provided in paragraph~~
36 ~~(e), provisions and limitations of any law respecting real~~
37 ~~property and obligations secured by an interest in real~~
38 ~~property or an estate therein, including, but not limited~~
39 ~~to, Section 726 of the Code of Civil Procedure, provisions~~
40 ~~regarding acceleration or reinstatement of obligations~~



1 secured by an interest in real property or an estate
2 therein, prohibitions against deficiency judgments,
3 limitations on deficiency judgments based on the value of
4 the collateral, limitations on the right to proceed as to
5 collateral, and requirements that a creditor resort either
6 first or at all to its security, do not in any way apply to
7 either (1) any personal property or fixtures other than
8 personal property or fixtures as to which the secured
9 party has proceeded or is proceeding under
10 subparagraph (ii) of paragraph (a), or (2) the obligation.

11 (ii) Pursuant to, but without limiting subparagraph
12 (i), in the event that an obligation secured by personal
13 property or fixtures would otherwise become
14 unenforceable by reason of Section 726 of the Code of
15 Civil Procedure or any requirement that a creditor resort
16 first to its security, then, notwithstanding that section or
17 any similar requirement, the obligation shall nevertheless
18 remain enforceable to the full extent necessary to permit
19 a secured party to proceed against personal property or
20 fixtures securing the obligation in accordance with the
21 secured party's rights and remedies as permitted under
22 this chapter.

23 (e) (i) Paragraph (b) does not limit the application of
24 Section 580b of the Code of Civil Procedure.

25 (ii) If the secured party commences an action, as
26 defined in Section 22 of the Code of Civil Procedure, and
27 the action seeks a monetary judgment on the debt,
28 paragraph (b) does not prevent the debtor's assertion of
29 any right to require the inclusion in the action of any
30 interest in real property or an estate therein securing the
31 debt. If a monetary judgment on the debt is entered in the
32 action, paragraph (b) does not prevent the debtor's
33 assertion of the subsequent unenforceability of the
34 encumbrance on any interest in real property or an estate
35 therein securing the debt and not included in the action.

36 (iii) Nothing in paragraph (b) shall be construed to
37 excuse compliance with Section 2924e of the Civil Code
38 as a prerequisite to the sale of real property, but that
39 section has no application to the right of a secured party
40 to proceed as to personal property or fixtures except, and



1 ~~then only to the extent that the secured party is~~
2 ~~proceeding as to personal property or fixtures in a unified~~
3 ~~sale as provided in subparagraph (ii) of paragraph (a).~~

4 ~~(iv) Paragraph (b) does not deprive the debtor of the~~
5 ~~protection of Section 580d of the Code of Civil Procedure~~
6 ~~against a deficiency judgment following a sale of the real~~
7 ~~property collateral pursuant to a power of sale in a deed~~
8 ~~of trust or mortgage.~~

9 ~~(v) Paragraph (b) shall not affect, nor shall it~~
10 ~~determine the applicability or inapplicability of, any law~~
11 ~~respecting real property or obligations secured in whole~~
12 ~~or in part by real property with respect to a loan or a~~
13 ~~credit sale made to any individual primarily for personal,~~
14 ~~family, or household purposes.~~

15 ~~(vi) Paragraph (b) does not deprive the debtor of the~~
16 ~~protection of Section 580a of the Code of Civil Procedure~~
17 ~~following a sale of real property collateral.~~

18 ~~(vii) If the secured party violates any statute or rule of~~
19 ~~law that requires a creditor who holds an obligation~~
20 ~~secured by an interest in real property or an estate~~
21 ~~therein to resort first to its security before resorting to any~~
22 ~~property of the debtor that does not secure the obligation,~~
23 ~~paragraph (b) does not prevent the debtor's assertion of~~
24 ~~any right to require correction of the violation, any right~~
25 ~~of the secured party to correct the violation, or the~~
26 ~~debtor's assertion of the subsequent unenforceability of~~
27 ~~the encumbrance on any interest in real property or an~~
28 ~~estate therein securing the obligation, or the debtor's~~
29 ~~assertion of the subsequent unenforceability of the~~
30 ~~obligation except to the extent that the obligation is~~
31 ~~preserved by subparagraph (ii) of paragraph (b).~~

32 ~~(d) If the secured party realizes proceeds from the~~
33 ~~disposition of collateral that is personal property or~~
34 ~~fixtures, the following provisions shall apply:~~

35 ~~(i) The disposition of the collateral, the realization of~~
36 ~~the proceeds, the application of the proceeds, or any one~~
37 ~~or more of the foregoing shall not operate to cure any~~
38 ~~nonmonetary default.~~

39 ~~(ii) The disposition of the collateral, the realization of~~
40 ~~the proceeds, the application of the proceeds, or any one~~



~~1 or more of the foregoing shall not operate to cure any
2 monetary default (although the application of the
3 proceeds shall, to the extent of those proceeds, satisfy the
4 secured obligation) so as to affect in any way the secured
5 party's rights and remedies under this chapter with
6 respect to any remaining personal property or fixtures
7 collateral.~~

~~8 (iii) All proceeds so realized shall be applied by the
9 secured party to the secured obligation in accordance
10 with the agreement of the parties and applicable law.~~

~~11 (e) An action by the secured party utilizing any
12 available judicial procedure, as provided in subdivision
13 (1), shall in no way be affected by omission of a prayer for
14 a monetary judgment on the debt. Notwithstanding
15 Section 726 of the Code of Civil Procedure, any
16 prohibition against splitting causes of action or any other
17 statute or rule of law, a judicial action which neither seeks
18 nor results in a monetary judgment on the debt shall not
19 preclude a subsequent action seeking a monetary
20 judgment on the debt or any other relief.~~

~~21 (f) As used in this subdivision, "monetary judgment on
22 the debt" means a judgment for the recovery from the
23 debtor of all or part of the principal amount of the secured
24 obligation, including, for purposes of this subdivision,
25 contractual interest thereon. "Monetary judgment on the
26 debt" does not include a judgment which provides only
27 for other relief (whether or not that other relief is secured
28 by the collateral), such as one or more forms of
29 nonmonetary relief, and monetary relief ancillary to any
30 of the foregoing, such as attorneys' fees and costs incurred
31 in seeking the relief.~~

~~32 (g) If a secured party fails to comply with the
33 procedures applicable to real property in proceeding as
34 to both real and personal property under subparagraph
35 (ii) of paragraph (a), a purchaser for value of any interest
36 in the real property at judicial or nonjudicial foreclosure
37 proceedings conducted pursuant to subparagraph (ii) of
38 paragraph (a) takes that interest free from any claim or
39 interest of another person, or any defect in title, based
40 upon that noncompliance, unless:~~



1 ~~(i) The purchaser is the secured party and the failure~~
2 ~~to comply with this chapter occurred other than in good~~
3 ~~faith; or~~

4 ~~(ii) The purchaser is other than the secured party and~~
5 ~~at the time of sale of the real property at that foreclosure~~
6 ~~the purchaser had knowledge of the failure to comply~~
7 ~~with this chapter and that the noncompliance occurred~~
8 ~~other than in good faith.~~

9 ~~Even if the purchaser at the foreclosure sale does not~~
10 ~~take his or her interest free of claims, interests, or title~~
11 ~~defects based upon that noncompliance with this chapter,~~
12 ~~a subsequent purchaser for value who acquires an interest~~
13 ~~in that real property from the purchaser at that~~
14 ~~foreclosure takes that interest free from any claim or~~
15 ~~interest of another person, or any defect in title, based~~
16 ~~upon that noncompliance, unless at the time of acquiring~~
17 ~~the interest the subsequent purchaser has knowledge of~~
18 ~~the failure to comply with this chapter and that the~~
19 ~~noncompliance occurred other than in good faith.~~

20 ~~(h) If a secured party proceeds by way of a unified sale~~
21 ~~under subparagraph (ii) of paragraph (a), then, for~~
22 ~~purposes of applying Section 580a or subdivision (b) of~~
23 ~~Section 726 of the Code of Civil Procedure to any such~~
24 ~~unified sale, the personal property or fixtures included in~~
25 ~~the unified sale shall be deemed to be included in the~~
26 ~~“real property or other interest sold,” as that term is used~~
27 ~~in Section 580a or subdivision (b) of Section 726 of the~~
28 ~~Code of Civil Procedure.~~

29 ~~(5) When a secured party has reduced his or her claim~~
30 ~~to judgment the lien of any levy which may be made upon~~
31 ~~his or her collateral by virtue of any execution based upon~~
32 ~~the judgment shall relate back to the date of the~~
33 ~~perfection of the security interest in the collateral. A~~
34 ~~judicial sale, pursuant to that execution, is a foreclosure of~~
35 ~~the security interest by judicial procedure within the~~
36 ~~meaning of this section, and the secured party may~~
37 ~~purchase at the sale and thereafter hold the collateral free~~
38 ~~of any other requirements of this division.~~



1 SEC. 5. Section 9502 of the Commercial Code, as
2 amended by Section 3 of Chapter 1125 of the Statutes of
3 1990, is amended to read:

4 9502. (1) When so agreed and in any event on default
5 the secured party is entitled to notify an account debtor
6 or the obligor on an instrument to make payment to him
7 or her whether or not the assignor was theretofore
8 making collections on the collateral, and also to take
9 control of any proceeds to which he or she is entitled
10 under Section 9306.

11 (2) (a) A secured party who by agreement is entitled
12 to charge back uncollected collateral or otherwise to full
13 or limited recourse against the debtor and who
14 undertakes to collect from the account debtors or obligors
15 must proceed in a commercially reasonable manner and
16 may deduct his or her reasonable expenses of realization
17 from the collections.

18 (b) If the security agreement secures an indebtedness,
19 the secured party must account to the debtor for any
20 surplus.

21 (c) If the security agreement secures an indebtedness,
22 the debtor is liable for any deficiency unless otherwise
23 agreed, but only (i) if the secured party in collection
24 pursuant to this section has proceeded in a commercially
25 reasonable manner, or (ii) as provided in paragraph (d).

26 (d) If the secured party in collecting pursuant to this
27 section has not proceeded in a commercially reasonable
28 manner, the debtor is liable, subject to paragraph (e), for
29 any deficiency only if the balance of the indebtedness
30 immediately before the collection exceeds the amount
31 ~~which~~ *that* the secured party establishes would have been
32 realized had the secured party in collecting pursuant to
33 this section proceeded in a commercially reasonable
34 manner, and the liability is limited to the excess.

35 (e) Notwithstanding paragraph (d), if the secured
36 party in collecting pursuant to this section has not
37 proceeded in a commercially reasonable manner, and if
38 the transaction was entered into by the debtor primarily
39 for personal, family, or household purposes or if the
40 amount of the indebtedness immediately before the



1 collection was one hundred thousand dollars (\$100,000)
2 or less, then the debtor is not liable for any deficiency.

3 (f) Upon entry of a final judgment that the debtor is
4 not liable for a deficiency by reason of either paragraph
5 (d) or paragraph (e), the secured party may neither
6 obtain a deficiency judgment nor retain a security
7 interest in any other collateral of the debtor that secured
8 the indebtedness for which the debtor is no longer liable.

9 (g) To the extent, subsequent to a collection ~~which~~
10 *that* does not satisfy the conditions set forth in clause (i)
11 of paragraph (c), or subsequent to a disposition ~~which~~
12 *that* does not satisfy any one or more of the conditions set
13 forth in clause (i) of paragraph (b) of subdivision (2) of
14 Section 9504, the secured party collects pursuant to this
15 section on other collateral securing the same
16 indebtedness, the debtor may, to the extent he or she is
17 no longer liable for a deficiency judgment by reason of
18 paragraph (d) or paragraph (e), or by reason of
19 paragraph (c) or paragraph (d) of subdivision (2) of
20 Section 9504, recover the proceeds realized from those
21 subsequent collections, as well as any damages to which
22 the debtor may be entitled if the subsequent collection is
23 itself noncomplying or otherwise wrongful. Except for
24 secured transactions entered by the debtor primarily for
25 personal, family, or household purposes, neither the
26 subsequent collections nor the exercise of any other
27 remedy by the secured party subsequent to a
28 noncomplying collection or disposition shall be deemed
29 tortious or otherwise wrongful based, in whole or in part,
30 on the fact that it occurred subsequent to a noncomplying
31 collection or disposition.

32 (h) If the underlying transaction was a sale of accounts
33 or chattel paper, the debtor is entitled to any surplus or
34 is liable for any deficiency only if the security agreement
35 so provides. The provisions of subdivision (b) of Section
36 701.040 of the Code of Civil Procedure relating to the
37 payment of proceeds apply only if the security agreement
38 provides that the debtor is entitled to any surplus.

39 (i) Nothing herein shall deprive the debtor of any
40 right to recover damages from the secured party under



1 subdivision (1) of Section 9507 or to offset any such
2 damages against any claim by the secured party for a
3 deficiency, or of any right or remedy to which the debtor
4 may be entitled under any other law. However, except in
5 the case of any secured party ~~which~~ *that* has willfully
6 failed to proceed in a commercially reasonable manner in
7 collection pursuant to this section, or in the case of a
8 debtor who entered the secured transaction primarily for
9 personal, family, or household purposes, any damages
10 recoverable by the debtor shall be reduced by the
11 amount of any deficiency that would have resulted had
12 the secured party in collecting pursuant to this section
13 proceeded in conformity with the condition set forth in
14 clause (i) of paragraph (c) regardless whether or not the
15 debtor is liable for the deficiency under paragraph (c) or
16 (d).

17 ~~(3) This section shall be repealed on January 1, 1996.~~

18 SEC. 6. Section 9502 of the Commercial Code, as
19 added by Section 3.5 of Chapter 1125 of the Statutes of
20 1990, is repealed.

21 ~~9502. (1) When so agreed and in any event on default
22 the secured party is entitled to notify an account debtor
23 or the obligor on an instrument to make payment to him
24 or her whether or not the assignor was theretofore
25 making collections on the collateral, and also to take
26 control of any proceeds to which he or she is entitled
27 under Section 9306.~~

28 ~~(2) A secured party who by agreement is entitled to
29 charge back uncollected collateral or otherwise to full or
30 limited recourse against the debtor and who undertakes
31 to collect from the account debtors or obligors must
32 proceed in a commercially reasonable manner and may
33 deduct his or her reasonable expenses of realization from
34 the collections. If the security agreement secures an
35 indebtedness, the secured party must account to the
36 debtor for any surplus, and unless otherwise agreed, the
37 debtor is liable for any deficiency. But, if the underlying
38 transaction was a sale of accounts or chattel paper, the
39 debtor is entitled to any surplus or is liable for any
40 deficiency only if the security agreement so provides.~~



1 SEC. 7. Section 9504 of the Commercial Code, as
2 amended by Section 4 of Chapter 1125 of the Statutes of
3 1990, is amended to read:

4 9504. (1) A secured party after default may sell, lease
5 or otherwise dispose of any or all of the collateral in its
6 then condition or following any commercially reasonable
7 preparation or processing. Any sale of goods is subject to
8 the division on sales (Division 2). The proceeds of
9 disposition shall be applied in the order following to:

10 (a) The reasonable expenses of retaking, holding,
11 preparing for sale or lease, selling, leasing and the like
12 and, to the extent provided for in the agreement and not
13 prohibited by law, the reasonable attorneys' fees and legal
14 expenses incurred by the secured party;

15 (b) The satisfaction of indebtedness secured by the
16 security interest under which the disposition is made;

17 (c) The satisfaction of indebtedness secured by any
18 subordinate security interest in the collateral if written
19 notification of demand therefor is received before
20 distribution of the proceeds is completed and to the
21 satisfaction of any subordinate attachment lien or
22 execution lien pursuant to subdivision (b) of Section
23 701.040 of the Code of Civil Procedure if notice of the levy
24 of attachment or execution is received before distribution
25 of the proceeds is completed. If requested by the secured
26 party, the holder of a subordinate security interest must
27 seasonably furnish reasonable proof of his or her interest,
28 and unless he or she does so, the secured party need not
29 comply with his or her demand.

30 (2) (a) If the security interest secures an
31 indebtedness, the secured party must account to the
32 debtor for any surplus except as provided in Section
33 701.040 of the Code of Civil Procedure.

34 (b) If the security interest secures an indebtedness,
35 the debtor is liable for any deficiency unless otherwise
36 agreed or otherwise provided in the Retail Installment
37 Sales Act, and in particular Section 1812.5 of the Civil
38 Code or any other statute, but only (i) if the debtor was
39 given notice, if and as required by subdivision (3), of the
40 disposition of the collateral in accordance with



1 subdivision (3), and the disposition of the collateral by the
2 secured party pursuant to this section was conducted in
3 good faith and in a commercially reasonable manner, or
4 (ii) except for secured transactions entered by a debtor
5 primarily for personal, family, or household purposes, as
6 provided in paragraph (c).

7 (c) If the secured party has provided notice to the
8 debtor pursuant to subdivision (3), if so required, but has
9 not proceeded in a commercially reasonable manner in
10 the disposition of the collateral, the debtor is liable,
11 subject to paragraphs (b) and (d), for any deficiency only
12 if the balance of the indebtedness immediately before the
13 disposition exceeds the amount ~~which~~ *that* the secured
14 party establishes would have been realized had the
15 disposition of the collateral by the secured party pursuant
16 to this section been conducted in conformity with the
17 conditions set forth in clause (i) of paragraph (b), and the
18 liability is limited to the excess. This paragraph does not
19 apply to secured transactions entered by a debtor
20 primarily for personal, family, or household purposes.

21 (d) Notwithstanding paragraph (c), if any one or
22 more of the conditions set forth in clause (i) of paragraph
23 (b) are not proved by the secured party to be satisfied
24 with respect to the disposition, then the debtor is not
25 liable for any deficiency if either:

26 (i) All of the collateral immediately before the
27 disposition was consumer goods and the amount of the
28 indebtedness immediately before the disposition was one
29 hundred thousand dollars (\$100,000) or less.

30 (ii) The amount of the indebtedness immediately
31 before the disposition was fifty thousand dollars (\$50,000)
32 or less.

33 (e) Upon entry of a final judgment that the debtor is
34 not liable for a deficiency by reason of either paragraph
35 (c) or paragraph (d), the secured party may neither
36 obtain a deficiency judgment nor retain a security
37 interest in any other collateral of the debtor ~~which~~ *that*
38 secured the indebtedness for which the debtor is no
39 longer liable.



1 (f) To the extent, subsequent to a disposition that does
2 not satisfy any one or more of the conditions set forth in
3 clause (i) of paragraph (b), or subsequent to a collection
4 ~~which~~ *that* does not satisfy the condition set forth in clause
5 (i) of paragraph (c) of subdivision (2) of Section 9502, the
6 secured party disposes pursuant to this section of other
7 collateral securing the same indebtedness, the debtor
8 may, to the extent he or she is no longer liable for a
9 deficiency judgment by reason of paragraph (c) or
10 paragraph (d), or by reason of paragraph (d) or
11 paragraph (e) of subdivision (2) of Section 9502, recover
12 the proceeds realized from the subsequent dispositions,
13 as well as any damages to which the debtor may be
14 entitled if the subsequent disposition is itself
15 noncomplying or otherwise wrongful. Except for secured
16 transactions entered by a debtor primarily for personal,
17 family, or household purposes, neither the subsequent
18 dispositions nor the exercise of any other remedy by the
19 secured party subsequent to a noncomplying disposition
20 or collection shall be deemed tortious or otherwise
21 wrongful based, in whole or in part, on the fact that it
22 occurred subsequent to a noncomplying disposition or
23 collection.

24 (g) If the underlying transaction was a sale of accounts
25 or chattel paper, the debtor is entitled to any surplus or
26 is liable for any deficiency only if the security agreement
27 so provides. The provisions of subdivision (b) of Section
28 701.040 of the Code of Civil Procedure relating to the
29 payment of proceeds and the liability of the secured party
30 apply only if the security agreement provides that the
31 debtor is entitled to any surplus.

32 (h) Nothing herein shall deprive the debtor of any
33 right to recover damages from the secured party under
34 subdivision (1) of Section 9507 or to offset any such
35 damages against any claim by the secured party for a
36 deficiency, or of any right or remedy to which the debtor
37 may be entitled under any other law; provided, however,
38 that, except in the case of any secured party ~~which~~ *that*
39 has willfully failed to conduct the disposition of collateral
40 in good faith and in a commercially reasonable manner or



1 in the case of a debtor who entered the secured
2 transaction primarily for personal, family, or household
3 purposes, any damages recoverable by the debtor shall be
4 reduced by the amount of any deficiency—~~which~~ *that*
5 would have resulted had the disposition of the collateral
6 by the secured party been conducted in conformity with
7 the conditions set forth in clause (i) of paragraph (b)
8 regardless whether or not the debtor is liable for the
9 deficiency under paragraph (b) or (c).

10 (3) A sale or lease of collateral may be as a unit or in
11 parcels, at wholesale or retail and at any time and place
12 and on any terms, provided the secured party acts in good
13 faith and in a commercially reasonable manner. Unless
14 collateral is perishable or threatens to decline speedily in
15 value or is of a type customarily sold on a recognized
16 market, the secured party must give to the debtor, if he
17 or she has not signed after default a statement renouncing
18 or modifying his or her right to notification of sale, and to
19 any other person who has a security interest in the
20 collateral and who has filed with the secured party a
21 written request for notice giving his or her address
22 (before that secured party sends his or her notification to
23 the debtor or before debtor's renunciation of his or her
24 rights), a notice in writing of the time and place of any
25 public sale or of the time on or after which any private sale
26 or other intended disposition is to be made. Such notice
27 must be delivered personally or be deposited in the
28 United States mail postage prepaid addressed to the
29 debtor at his or her address as set forth in the financing
30 statement or as set forth in the security agreement or at
31 such other address as may have been furnished to the
32 secured party in writing for this purpose, or, if no address
33 has been so set forth or furnished, at his or her last known
34 address, and to any other secured party at the address set
35 forth in his or her request for notice, at least five days
36 before the date fixed for any public sale or before the day
37 on or after which any private sale or other disposition is
38 to be made. Notice of the time and place of a public sale
39 shall also be given at least five days before the date of sale
40 by publication once in a newspaper of general circulation



1 published in the county in which the sale is to be held or
2 in case no newspaper of general circulation is published
3 in the county in which the sale is to be held, in a
4 newspaper of general circulation published in the county
5 in this state that (1) is contiguous to the county in which
6 the sale is to be held and (2) has, by comparison with all
7 similarly contiguous counties, the highest population
8 based upon total county population as determined by the
9 most recent federal decennial census published by the
10 Bureau of the Census. Any public sale shall be held in the
11 county or place specified in the security agreement, or if
12 no county or place is specified in the security agreement,
13 in the county in which the collateral or any part thereof
14 is located or in the county in which the debtor has his or
15 her residence or chief place of business, or in the county
16 in which the secured party has his or her residence or a
17 place of business if the debtor does not have a residence
18 or chief place of business within this state. If the collateral
19 is located outside of this state or has been removed from
20 this state, a public sale may be held in the locality in which
21 the collateral is located. Any public sale may be
22 postponed from time to time by public announcement at
23 the time and place last scheduled for the sale. The secured
24 party may buy at any public sale and if the collateral is
25 customarily sold in a recognized market or is the subject
26 of widely or regularly distributed standard price
27 quotations he or she may buy at private sale. Any sale of
28 which notice is delivered or mailed and published as
29 herein provided and ~~which~~ *that* is held as herein provided
30 is a public sale.

31 (4) When collateral is disposed of by a secured party
32 after default, the disposition transfers to a purchaser for
33 value all of the debtor's rights therein, discharges the
34 security interest under which it is made and any security
35 interest or lien subordinate thereto. The purchaser takes
36 free of all such rights and interest even though the
37 secured party fails to comply with the requirements of
38 this chapter or of any judicial proceedings.

39 (a) In the case of a public sale, if the purchaser has no
40 knowledge of any defects in the sale and if he or she does



1 not buy in collusion with the secured party, other bidders
2 or the person conducting the sale; or

3 (b) In any other case, if the purchaser acts in good
4 faith.

5 (5) A person who is liable to a secured party under a
6 guaranty, indorsement, repurchase agreement or the like
7 and who receives a transfer of collateral from the secured
8 party or is subrogated to his or she rights has thereafter
9 the rights and duties of the secured party. Such a transfer
10 of collateral is not a sale or disposition of the collateral
11 under this division.

12 ~~(6) This section shall be repealed on January 1, 1996.~~

13 SEC. 8. Section 9504 of the Commercial Code, as
14 added by Section 4.5 of Chapter 1125 of the Statutes of
15 1990, is repealed.

16 ~~9504. (1) A secured party after default may sell, lease
17 or otherwise dispose of any or all of the collateral in its
18 then condition or following any commercially reasonable
19 preparation or processing. Any sale of goods is subject to
20 the division on sales (Division 2). The proceeds of
21 disposition shall be applied in the order following to:~~

22 ~~(a) The reasonable expenses of retaking, holding,
23 preparing for sale or lease, selling, leasing and the like
24 and, to the extent provided for in the agreement and not
25 prohibited by law, the reasonable attorneys' fees and legal
26 expenses incurred by the secured party;~~

27 ~~(b) The satisfaction of indebtedness secured by the
28 security interest under which the disposition is made;~~

29 ~~(c) The satisfaction of indebtedness secured by any
30 subordinate security interest in the collateral if written
31 notification of demand therefor is received before
32 distribution of the proceeds is completed and to the
33 satisfaction of any subordinate attachment lien or
34 execution lien pursuant to subdivision (b) of Section
35 701.040 of the Code of Civil Procedure if notice of the levy
36 of attachment or execution is received before distribution
37 of the proceeds is completed. If requested by the secured
38 party, the holder of a subordinate security interest must
39 seasonably furnish reasonable proof of his or her interest;~~



1 and unless he or she does so, the secured party need not
2 comply with his or her demand.

3 (2) If the security interest secures an indebtedness,
4 the secured party must account to the debtor for any
5 surplus except as provided in Section 701.040 of the Code
6 of Civil Procedure, and, unless otherwise agreed, the
7 debtor is liable for any deficiency. But if the underlying
8 transaction was a sale of accounts or chattel paper, the
9 debtor is entitled to any surplus or is liable for any
10 deficiency only if the security agreement so provides and
11 the provisions of Section 701.040 of the Code of Civil
12 Procedure relating to payment of proceeds and the
13 liability of the secured party apply only if the security
14 agreement provides that the debtor is entitled to any
15 surplus.

16 (3) A sale or lease of collateral may be as a unit or in
17 parcels, at wholesale or retail and at any time and place
18 and on any terms, provided the secured party acts in good
19 faith and in a commercially reasonable manner. Unless
20 collateral is perishable or threatens to decline speedily in
21 value or is of a type customarily sold on a recognized
22 market, the secured party must give to the debtor, if he
23 or she has not signed after default a statement renouncing
24 or modifying his or her right to notification of sale, and to
25 any other person who has a security interest in the
26 collateral and who has filed with the secured party a
27 written request for notice giving his or her address
28 (before that secured party sends his or her notification to
29 the debtor or before debtor's renunciation of his or her
30 rights), a notice in writing of the time and place of any
31 public sale or of the time on or after which any private sale
32 or other intended disposition is to be made. Such notice
33 must be delivered personally or be deposited in the
34 United States mail postage prepaid addressed to the
35 debtor at his or her address as set forth in the financing
36 statement or as set forth in the security agreement or at
37 such other address as may have been furnished to the
38 secured party in writing for this purpose, or, if no address
39 has been so set forth or furnished, at his or her last known
40 address, and to any other secured party at the address set



1 ~~forth in his or her request for notice, at least five days~~
2 ~~before the date fixed for any public sale or before the day~~
3 ~~on or after which any private sale or other disposition is~~
4 ~~to be made. Notice of the time and place of a public sale~~
5 ~~shall also be given at least five days before the date of sale~~
6 ~~by publication once in a newspaper of general circulation~~
7 ~~published in the county in which the sale is to be held or~~
8 ~~in case no newspaper of general circulation is published~~
9 ~~in the county in which the sale is to be held, in a~~
10 ~~newspaper of general circulation published in the county~~
11 ~~in this state that (1) is contiguous to the county in which~~
12 ~~the sale is to be held and (2) has, by comparison with all~~
13 ~~similarly contiguous counties, the highest population~~
14 ~~based upon total county population as determined by the~~
15 ~~most recent federal decennial census published by the~~
16 ~~Bureau of the Census. Any public sale shall be held in the~~
17 ~~county or place specified in the security agreement, or if~~
18 ~~no county or place is specified in the security agreement,~~
19 ~~in the county in which the collateral or any part thereof~~
20 ~~is located or in the county in which the debtor has his or~~
21 ~~her residence or chief place of business, or in the county~~
22 ~~in which the secured party has his or her residence or a~~
23 ~~place of business if the debtor does not have a residence~~
24 ~~or chief place of business within this state. If the collateral~~
25 ~~is located outside of this state or has been removed from~~
26 ~~this state, a public sale may be held in the locality in which~~
27 ~~the collateral is located. Any public sale may be~~
28 ~~postponed from time to time by public announcement at~~
29 ~~the time and place last scheduled for the sale. The secured~~
30 ~~party may buy at any public sale and if the collateral is~~
31 ~~customarily sold in a recognized market or is the subject~~
32 ~~of widely or regularly distributed standard price~~
33 ~~quotations he or she may buy at private sale. Any sale of~~
34 ~~which notice is delivered or mailed and published as~~
35 ~~herein provided and which is held as herein provided is~~
36 ~~a public sale.~~

37 ~~(4) When collateral is disposed of by a secured party~~
38 ~~after default, the disposition transfers to a purchaser for~~
39 ~~value all of the debtor's rights therein, discharges the~~
40 ~~security interest under which it is made and any security~~



1 ~~interest or lien subordinate thereto. The purchaser takes~~
2 ~~free of all such rights and interest even though the~~
3 ~~secured party fails to comply with the requirements of~~
4 ~~this chapter or of any judicial proceedings.~~

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

9 ~~(b) In any other case, if the purchaser acts in good~~
10 ~~faith.~~

11 ~~(5) A person who is liable to a secured party under a~~
12 ~~guaranty, indorsement, repurchase agreement or the like~~
13 ~~and who receives a transfer of collateral from the secured~~
14 ~~party or is subrogated to his or her rights has thereafter~~
15 ~~the rights and duties of the secured party. Such a transfer~~
16 ~~of collateral is not a sale or disposition of the collateral~~
17 ~~under this division.~~

18 SEC. 9. Section 5 of Chapter 1125 of the Statutes of
19 1990 is repealed.

20 SEC. 5. Sections 1.5, 2.5, 3.5, and 4.5 of this act shall
21 become operative on January 1, 1996.

