AMENDED IN SENATE JULY 3, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 1689

Introduced by Assembly Member Weggeland

February 24, 1995

An act to amend ~~and repeal Section~~ *Sections 483.010, 483.015, and* 701.040 of the Code of Civil Procedure, to amend ~~and repeal~~ Sections 9501, 9502, and 9504 of the Commercial Code, and to ~~repeal~~ *amend* Section 5 of Chapter 1125 of the Statutes of 1990, relating to remedies.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) Existing law generally permits the use of a prejudgment attachment in civil actions to recover on obligations secured by personal property, or secured by fixtures under the Commercial Code or, in limited cases, secured by real property. Existing law excludes from the amount that may be secured by attachment the value of any security interest held by the plaintiff in the defendant's property to secure the defendant's indebtedness to the plaintiff, together with any decrease in the value of the security by reason of acts of the plaintiff or person to whom the security interest was transferred.

Under existing law these provisions would be repealed on January 1, 1996, and other provisions would become operative

that, with certain exceptions, preclude the use of a prejudgment attachment.

This bill would instead repeal the provisions currently in effect on January 1, 1998.

(2) 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Under existing law these provisions would be repealed on January 1, 1996, and other provisions would become operative that would generally provide that the debtor is liable for any deficiency unless otherwise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~~ *instead repeal the provisions currently in effect on January 1, 1999*.

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 483.010 of the Code of Civil*
2 *Procedure, as amended by Section 26 of Chapter 589 of*
3 *the Statutes of 1993, is amended to read:*

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty and any statutory, common law, or equitable lien on real property, but excluding any security interest in fixtures subject to Division 9 (commencing with Section 9101) of the Commercial Code). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount to be secured by the attachment shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

(e) This section shall remain in effect only until January 1, ~~1996~~ *1998*, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~1996~~ *1998*, deletes or extends that date.

SEC. 2. Section 483.010 of the Code of Civil Procedure, as added by Section 1.5 of Chapter 943 of the Statutes of 1990, is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees.

(b) An attachment may not be issued on a claim which is secured by any interest in real or personal property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty, any security interest subject to Division 9 (commencing with Section 9101) of the Commercial Code, and any statutory, common law, or equitable lien). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, the security has become valueless or has decreased in value to less than the amount then owing on the claim, in which event the amount for which the attachment may issue shall not exceed the lesser of the amount of the decrease or the difference between the value of the security and the amount then owing on the claim, or (2) where the claim was secured by a nonconsensual possessory lien but the lien has been relinquished by the surrender of the possession of the property.

(c) If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession. An attachment may not be issued on a claim against a defendant who is a natural person if the claim is based on the sale or lease of property, a license to use property, the furnishing of services, or the

loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the defendant primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.

(e) This section shall become operative on January 1, ~~1996~~ *1998*.

SEC. 3. Section 483.015 of the Code of Civil Procedure, as amended by Section 27 of Chapter 589 of the Statutes of 1993, is amended to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(4) The value of any security interest in the property of the defendant held by the plaintiff to secure the defendant's indebtedness claimed by the plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or any person to whom the security interest was transferred.

(c) This section shall remain in effect only until January 1, ~~1996~~ *1998*, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, ~~1996~~ *1998*, deletes or extends that date.

SEC. 4. Section 483.015 of the Code of Civil Procedure, as added by Section 2.5 of Chapter 943 of the Statutes of 1990, is amended to read:

483.015. (a) Subject to subdivision (b) and to Section 483.020, the amount to be secured by an attachment is the sum of the following:

(1) The amount of the defendant's indebtedness claimed by the plaintiff.

(2) Any additional amount included by the court under Section 482.110.

(b) The amount described in subdivision (a) shall be reduced by the sum of the following:

(1) The amount of any money judgment in favor of the defendant and against the plaintiff that remains unsatisfied and is enforceable.

(2) The amount of any indebtedness of the plaintiff that the defendant has claimed in a cross-complaint filed in the action if the defendant's claim is one upon which an attachment could be issued.

(3) The amount of any claim of the defendant asserted as a defense in the answer pursuant to Section 431.70 if the defendant's claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations.

(c) This section shall become operative on January 1, ~~1996~~ *1998*.

SEC. 5. Section 701.040 of the Code of Civil Procedure, as amended by Section 1 of Chapter 1125 of the Statutes of 1990, is amended to read:

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the

levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

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

(c) This section shall be repealed on January 1, 1999.

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

~~SEC. 3.~~

SEC. 6. Section 9501 of the Commercial Code, as amended by Section 2 of Chapter 1125 of the Statutes of 1990, is amended to read:

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

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

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subdivisions referred to below may not be waived or varied except as provided with respect to compulsory

disposition of collateral (subdivision (3) of Section 9504 and Section 9505) and with respect to redemption of collateral (Section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

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

(b) Subdivision (3) of Section 9504 and subdivision (1) of Section 9505 that deal with disposition of collateral;

(c) Subdivision (2) of Section 9505 that deals with acceptance of collateral as discharge of obligation;

(d) Section 9506 that deals with redemption of collateral; and

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

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

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

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

(ii) Proceed in any sequence, as to both some or all of the real property and some or all of the personal property or fixtures in accordance with the secured party's rights and remedies in respect of the real property, by including the portion of the personal property or fixtures selected by the secured party in the judicial or nonjudicial foreclosure of the real property in accordance with the procedures applicable to real property. In proceeding under this subparagraph, (A) no provision of this chapter other than this subparagraph, subparagraph (iii) of paragraph (d), and paragraphs (g) and (h) shall apply to

any aspect of the foreclosure; (B) a power of sale under the deed of trust or mortgage shall be exercisable with respect to both the real property and the personal property or fixtures being sold; and (C) the sale may be conducted by the mortgagee under the mortgage or by the trustee under the deed of trust. The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property has been actually disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.

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

(b) (i) Except as otherwise provided in paragraph (c), provisions and limitations of any law respecting real property and obligations secured by an interest in real property or an estate therein, including, but not limited to, Section 726 of the Code of Civil Procedure, provisions regarding acceleration or reinstatement of obligations secured by an interest in real property or an estate therein, prohibitions against deficiency judgments, limitations on deficiency judgments based on the value of the collateral, limitations on the right to proceed as to collateral, and requirements that a creditor resort either first or at all to its security, do not in any way apply to either (1) any personal property or fixtures other than personal property or fixtures as to which the secured party has proceeded or is proceeding under subparagraph (ii) of paragraph (a), or (2) the obligation.

(ii) Pursuant to, but without limiting subparagraph (i), in the event that an obligation secured by personal property or fixtures would otherwise become unenforceable by reason of Section 726 of the Code of Civil Procedure or any requirement that a creditor resort first to its security, then, notwithstanding that section or

any similar requirement, the obligation shall nevertheless remain enforceable to the full extent necessary to permit a secured party to proceed against personal property or fixtures securing the obligation in accordance with the secured party's rights and remedies as permitted under this chapter.

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

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

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

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

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

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

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

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

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

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

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

(e) An action by the secured party utilizing any available judicial procedure, as provided in subdivision (1), shall in no way be affected by omission of a prayer for a monetary judgment on the debt. Notwithstanding

Section 726 of the Code of Civil Procedure, any prohibition against splitting causes of action or any other statute or rule of law, a judicial action that neither seeks nor results in a monetary judgment on the debt shall not preclude a subsequent action seeking a monetary judgment on the debt or any other relief.

(f) As used in this subdivision, ‘‘monetary judgment on the debt’’ means a judgment for the recovery from the debtor of all or part of the principal amount of the secured obligation, including, for purposes of this subdivision, contractual interest thereon. ‘‘Monetary judgment on the debt’’ does not include a judgment that provides only for other relief (whether or not that other relief is secured by the collateral), such as one or more forms of nonmonetary relief, and monetary relief ancillary to any of the foregoing, such as attorneys’ fees and costs incurred in seeking the relief.

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

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

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

Even if the purchaser at the foreclosure sale does not take his or her interest free of claims, interests, or title defects based upon that noncompliance with this chapter, a subsequent purchaser for value who acquires an interest in that real property from the purchaser at that foreclosure takes that interest free from any claim or

interest of another person, or any defect in title, based upon that noncompliance, unless at the time of acquiring the interest the subsequent purchaser has knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

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

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

(6) This section shall be repealed on January 1, 1999.

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

~~SEC. 5.~~

SEC. 7. Section 9502 of the Commercial Code, as amended by Section 3 of Chapter 1125 of the Statutes of 1990, is amended to read:

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

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

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

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

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

(e) Notwithstanding paragraph (d), if the secured party in collecting pursuant to this section has not proceeded in a commercially reasonable manner, and if the transaction was entered into by the debtor primarily for personal, family, or household purposes or if the amount of the indebtedness immediately before the collection was one hundred thousand dollars ($100,000) or less, then the debtor is not liable for any deficiency.

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

(g) To the extent, subsequent to a collection that does not satisfy the conditions set forth in clause (i) of

paragraph (c), or subsequent to a disposition that does not satisfy any one or more of the conditions set forth in clause (i) of paragraph (b) of subdivision (2) of Section 9504, the secured party collects pursuant to this section on other collateral securing the same indebtedness, the debtor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (d) or paragraph (e), or by reason of paragraph (c) or paragraph (d) of subdivision (2) of Section 9504, recover the proceeds realized from those subsequent collections, as well as any damages to which the debtor may be entitled if the subsequent collection is itself noncomplying or otherwise wrongful. Except for secured transactions entered by the debtor primarily for personal, family, or household purposes, neither the subsequent collections nor the exercise of any other remedy by the secured party subsequent to a noncomplying collection or disposition shall be deemed tortious or otherwise wrongful based, in whole or in part, on the fact that it occurred subsequent to a noncomplying collection or disposition.

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

(i) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law. However, except in the case of any secured party that has willfully failed to proceed in a commercially reasonable manner in collection pursuant to this section, or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the

amount of any deficiency that would have resulted had the secured party in collecting pursuant to this section proceeded in conformity with the condition set forth in clause (i) of paragraph (c) regardless whether or not the debtor is liable for the deficiency under paragraph (c) or (d).

(3) This section shall be repealed on January 1, 1999.

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

~~SEC. 7.~~

SEC. 8. Section 9504 of the Commercial Code, as amended by Section 4 of Chapter 1125 of the Statutes of 1990, is amended to read:

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

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

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

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

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

(b) If the security interest secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed or otherwise provided in the Retail Installment Sales Act, and in particular Section 1812.5 of the Civil Code or any other statute, but only (i) if the debtor was given notice, if and as required by subdivision (3), of the disposition of the collateral in accordance with subdivision (3), and the disposition of the collateral by the secured party pursuant to this section was conducted in good faith and in a commercially reasonable manner, or (ii) except for secured transactions entered by a debtor primarily for personal, family, or household purposes, as provided in paragraph (c).

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

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

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

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

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

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

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

(h) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law; provided, however, that, except in the case of any secured party that has willfully failed to conduct the disposition of collateral in good faith and in a commercially reasonable manner or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the amount of any deficiency that would have resulted had the disposition of the collateral by the secured party been conducted in conformity with the conditions set forth in clause (i) of paragraph (b) regardless whether or not the debtor is liable for the deficiency under paragraph (b) or (c).

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the secured party must give to the debtor, if he or she has not signed after default a statement renouncing or modifying his or her right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his or her address (before that secured party sends his or her notification to the debtor or before debtor's renunciation of his or her rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepaid addressed to the debtor at his or her address as set forth in the financing statement or as set forth in the security agreement or at such other address as may have been furnished to the

secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his or her last known address, and to any other secured party at the address set forth in his or her request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held or in case no newspaper of general circulation is published in the county in which the sale is to be held, in a newspaper of general circulation published in the county in this state that (1) is contiguous to the county in which the sale is to be held and (2) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his or her residence or chief place of business, or in the county in which the secured party has his or her residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he or she may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and that is held as herein provided is a public sale.

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

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

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

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

(6) This section shall be repealed on January 1, 1999.

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

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

SEC. 9. Section 5 of Chapter 1125 of the Statutes of 1990 is amended to read:

Sec. 5. Sections 1.5, 2.5, 3.5, and 4.5 of this act shall become operative on January 1, ~~1996~~ *1999*.

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