

AMENDED IN ASSEMBLY AUGUST 25, 2000

AMENDED IN ASSEMBLY JUNE 28, 2000

AMENDED IN ASSEMBLY JUNE 21, 2000

SENATE BILL

No. 2002

**Introduced by Committee on Judiciary (Senators Schiff
(Chair), Burton, Escutia, O'Connell, and Sher)**

February 25, 2000

An act to amend Sections 2924f and 3440.5 of the Civil Code, ~~and to amend Sections 9102,~~ to amend Section 340.9 of the Code of Civil Procedure, to amend Sections 1201, 2210, 2502, 9102, 9104, 9205, 9210, 9307, 9311, 9317, 9319, 9323, 9325, 9331, 9336, 9407, 9408, 9502, 9505, 9509, 9513, 9519, 9524, 9525, 9608, 9611, 9613, 9615, 9625, 9626, 9702, and 9705 of, to amend and renumber Section 9708 of, to amend, renumber, and add Section 9707 of, and to repeal and add Sections 9403, 9404, 9405, 9406, and 9409 of, the Commercial Code, and to amend Sections 12183 and 12194 of, *and to add Section 27291 to*, the Government Code, relating to ~~commercial law~~ *contracts*.

LEGISLATIVE COUNSEL'S DIGEST

SB 2002, as amended, Committee on Judiciary. ~~Commercial law: secured~~ *Secured* transactions: *statute of limitations*.

Existing provisions of the Uniform Commercial Code govern security interests in personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper. These provisions will, pursuant to Chapter 991 of the Statutes of 1999, be repealed and replaced with new

provisions concerning these subjects, to be operative on July 1, 2001. However, because Chapter 991 of the Statutes of 1999 contains a provision deferring to other bills passed by the Legislature during the 1999 calendar year, certain existing provisions relating to fees charged by the Secretary of State, which were enacted as Chapter 1000 of the Statutes of 1999, were not repealed because they were the subject of legislation in 1999, and those existing provisions will duplicate and be inconsistent with the new provisions enacted by Chapter 991 of the Statutes of 1999 as of July 1, 2001.

This bill would repeal those existing duplicate provisions as of July 1, 2001, and would reenact the new provisions previously enacted by Chapter 991 of the Statutes of 1999 to incorporate the changes of Chapter 1000 of the Statutes of 1999, thereby reconciling both chapters. This bill would make other technical, conforming, and clarifying changes.

Exiting law sets forth the statutes of limitation for various causes of action. SB 1899, if it is enacted and becomes effective, will provide that certain insurance claims arising out of the Northridge earthquake of 1994 which are barred solely because the applicable statute of limitations has or had expired shall be revived, as specified; however, the bill's provisions shall not apply to, among other things, any written compromised settlement agreement between an insurer and insured where the insured was represented by counsel, as specified.

This bill would instead provide that, if SB 1899 is enacted and becomes effective, those provisions shall not apply to any such written compromised settlement agreement where the insured is fully informed of the nature and extent of damages and availability of coverage.

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 2924f of the Civil Code is
 2 amended to read:
 3 2924f. (a) As used in this section and Sections 2924g
 4 and 2924h, "property" means real property or a leasehold



1 estate therein, and “calendar week” means Monday
2 through Saturday, inclusive.

3 (b) (1) Except as provided in subdivision (c), before
4 any sale of property can be made under the power of sale
5 contained in any deed of trust or mortgage, or any resale
6 resulting from a rescission for a failure of consideration
7 pursuant to subdivision (c) of Section 2924h, notice of the
8 sale thereof shall be given by posting a written notice of
9 the time of sale and of the street address and the specific
10 place at the street address where the sale will be held, and
11 describing the property to be sold, at least 20 days before
12 the date of sale in one public place in the city where the
13 property is to be sold, if the property is to be sold in a city,
14 or, if not, then in one public place in the judicial district
15 in which the property is to be sold, and publishing a copy
16 once a week for three consecutive calendar weeks, the
17 first publication to be at least 20 days before the date of
18 sale, in a newspaper of general circulation published in
19 the city in which the property or some part thereof is
20 situated, if any part thereof is situated in a city, if not, then
21 in a newspaper of general circulation published in the
22 judicial district in which the property or some part
23 thereof is situated, or in case no newspaper of general
24 circulation is published in the city or judicial district, as
25 the case may be, in a newspaper of general circulation
26 published in the county in which the property or some
27 part thereof is situated, or in case no newspaper of general
28 circulation is published in the city or judicial district or
29 county, as the case may be, in a newspaper of general
30 circulation published in the county in this state that (A)
31 is contiguous to the county in which the property or some
32 part thereof is situated and (B) has, by comparison with
33 all similarly contiguous counties, the highest population
34 based upon total county population as determined by the
35 most recent federal decennial census published by the
36 Bureau of the Census. A copy of the notice of sale shall also
37 be posted in a conspicuous place on the property to be
38 sold at least 20 days before the date of sale, where possible
39 and where not restricted for any reason. If the property
40 is a single-family residence the posting shall be on a door



1 of the residence, but, if not possible or restricted, then the
2 notice shall be posted in a conspicuous place on the
3 property; however, if access is denied because a common
4 entrance to the property is restricted by a guard gate or
5 similar impediment, the property may be posted at that
6 guard gate or similar impediment to any development
7 community. Additionally, the notice of sale shall conform
8 to the minimum requirements of Section 6043 of the
9 Government Code and be recorded with the county
10 recorder of the county in which the property or some part
11 thereof is situated at least 14 days prior to the date of sale.
12 The notice of sale shall contain the name, street address
13 in this state, which may reflect an agent of the trustee, and
14 either a toll-free telephone number or telephone number
15 in this state of the trustee, and the name of the original
16 trustor, and also shall contain the statement required by
17 paragraph (3) of subdivision (c). In addition to any other
18 description of the property, the notice shall describe the
19 property by giving its street address, if any, or other
20 common designation, if any, and a county assessor's
21 parcel number; but if the property has no street address
22 or other common designation, the notice shall contain a
23 legal description of the property, the name and address
24 of the beneficiary at whose request the sale is to be
25 conducted, and a statement that directions may be
26 obtained pursuant to a written request submitted to the
27 beneficiary within 10 days from the first publication of the
28 notice. Directions shall be deemed reasonably sufficient
29 to locate the property if information as to the location of
30 the property is given by reference to the direction and
31 approximate distance from the nearest crossroads,
32 frontage road, or access road. If a legal description or a
33 county assessor's parcel number and either a street
34 address or another common designation of the property
35 is given, the validity of the notice and the validity of the
36 sale shall not be affected by the fact that the street
37 address, other common designation, name and address of
38 the beneficiary, or the directions obtained therefrom are
39 erroneous or that the street address, other common
40 designation, name and address of the beneficiary, or



1 directions obtained therefrom are omitted. The term
2 “newspaper of general circulation,” as used in this
3 section, has the same meaning as defined in Article 1
4 (commencing with Section 6000) of Chapter 1 of Division
5 7 of Title 1 of the Government Code.

6 The notice of sale shall contain a statement of the total
7 amount of the unpaid balance of the obligation secured
8 by the property to be sold and reasonably estimated costs,
9 expenses, advances at the time of the initial publication
10 of the notice of sale, and, if republished pursuant to a
11 cancellation of a cash equivalent pursuant to subdivision
12 (d) of Section 2924h, a reference of that fact; provided,
13 that the trustee shall incur no liability for any good faith
14 error in stating the proper amount, including any amount
15 provided in good faith by or on behalf of the beneficiary.
16 An inaccurate statement of this amount shall not affect
17 the validity of any sale to a bona fide purchaser for value,
18 nor shall the failure to post the notice of sale on a door as
19 provided by this subdivision affect the validity of any sale
20 to a bona fide purchaser for value.

21 (2) If the sale of the property is to be a unified sale as
22 provided in subparagraph (B) of paragraph (1) of
23 subdivision (a) of Section 9604 of the Commercial Code,
24 the notice of sale shall also contain a description of the
25 personal property or fixtures to be sold. In the case where
26 it is contemplated that all of the personal property or
27 fixtures are to be sold, the description in the notice of the
28 personal property or fixtures shall be sufficient if it is the
29 same as the description of the personal property or
30 fixtures contained in the agreement creating the security
31 interest in or encumbrance on the personal property or
32 fixtures or the filed financing statement relating to the
33 personal property or fixtures. In all other cases, the
34 description in the notice shall be sufficient if it would be
35 a sufficient description of the personal property or
36 fixtures under Section 9108 of the Commercial Code.
37 Inclusion of a reference to or a description of personal
38 property or fixtures in a notice of sale hereunder shall not
39 constitute an election by the secured party to conduct a
40 unified sale pursuant to subparagraph (B) of paragraph



1 (1) of subdivision (a) of Section 9604 of the Commercial
 2 Code, shall not obligate the secured party to conduct a
 3 unified sale pursuant to subparagraph (B) of paragraph
 4 (1) of subdivision (a) of Section 9604 of the Commercial
 5 Code, and in no way shall render defective or
 6 noncomplying either that notice or a sale pursuant to that
 7 notice by reason of the fact that the sale includes none or
 8 less than all of the personal property or fixtures referred
 9 to or described in the notice. This paragraph shall not
 10 otherwise affect the obligations or duties of a secured
 11 party under the Commercial Code.

12 (c) (1) This subdivision applies only to deeds of trust
 13 or mortgages which contain a power of sale and which are
 14 secured by real property containing a single-family,
 15 owner-occupied residence, where the obligation secured
 16 by the deed of trust or mortgage is contained in a contract
 17 for goods or services subject to the provisions of the
 18 Unruh Act (Chapter 1 (commencing with Section 1801)
 19 of Title 2 of Part 4 of Division 3).

20 (2) Except as otherwise expressly set forth in this
 21 subdivision, all other provisions of law relating to the
 22 exercise of a power of sale shall govern the exercise of a
 23 power of sale contained in a deed of trust or mortgage
 24 described in paragraph (1).

25 (3) If any default of the obligation secured by a deed
 26 of trust or mortgage described in paragraph (1) has not
 27 been cured within 30 days after the recordation of the
 28 notice of default, the trustee or mortgagee shall mail to
 29 the trustor or mortgagor, at his or her last known address,
 30 a copy of the following statement:

31
 32 YOU ARE IN DEFAULT UNDER A
 33 _____,
 34 (Deed of trust or mortgage)
 35 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
 36 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
 37 YOU NEED AN EXPLANATION OF THE NATURE OF THE
 38 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
 39 LAWYER.

40



1 (4) All sales of real property pursuant to a power of sale
2 contained in any deed of trust or mortgage described in
3 paragraph (1) shall be held in the county where the
4 residence is located and shall be made to the person
5 making the highest offer. The trustee may receive offers
6 during the 10-day period immediately prior to the date of
7 sale and if any offer is accepted in writing by both the
8 trustor or mortgagor and the beneficiary or mortgagee
9 prior to the time set for sale, the sale shall be postponed
10 to a date certain and prior to which the property may be
11 conveyed by the trustor to the person making the offer
12 according to its terms. The offer is revocable until
13 accepted. The performance of the offer, following
14 acceptance, according to its terms, by a conveyance of the
15 property to the offeror, shall operate to terminate any
16 further proceeding under the notice of sale and it shall be
17 deemed revoked.

18 (5) In addition to the trustee fee pursuant to Section
19 2924c, the trustee or mortgagee pursuant to a deed of
20 trust or mortgage subject to this subdivision shall be
21 entitled to charge an additional fee of fifty dollars (\$50).

22 (6) This subdivision applies only to property on which
23 notices of default were filed on or after the effective date
24 of this subdivision.

25 SEC. 2. Section 3440.5 of the Civil Code, as amended
26 by Chapter 991 of the Statutes of 1999, is amended to read:

27 3440.5. (a) This chapter does not affect the rights of
28 a secured party who, for value and in good faith, acquires
29 a security interest in the transferred personal property
30 from the transferee, or from the transferee's successor in
31 interest, if the transferor is no longer in possession of the
32 personal property at the time the security interest
33 attaches.

34 (b) Additionally, except as provided in Section 3440.3,
35 this chapter does not affect the rights of a secured party
36 who acquires a security interest from the transferee, or
37 from the transferee's successor in interest, in the personal
38 property, if all of the following conditions are satisfied:

39 (1) On or before the date the security agreement is
40 executed, the intended debtor or secured party files a



1 financing statement with respect to the property
2 transferred, signed by the intended debtor. The financing
3 statement shall be filed in the office of the Secretary of
4 State in accordance with Chapter 5 (commencing with
5 Section 9501) of Division 9 of the Commercial Code, but
6 shall use the terms “transferor” in lieu of “debtor,”
7 “transferee” in lieu of “secured party,” and “secured
8 party” in lieu of “assignee of secured party.” The
9 provisions of Chapter 5 (commencing with Section 9501)
10 of Division 9 of the Commercial Code shall apply as
11 appropriate to such a statement. For the purpose of
12 indexing, and in any certification of search, the Secretary
13 of State may refer to any financing statement filed
14 pursuant to this paragraph as a financing statement under
15 the Commercial Code and may describe the transferor as
16 a debtor and the transferee as a secured party.

17 Compliance with this paragraph shall, however, not
18 perfect the security interest of the secured party.
19 Perfection of such a security interest shall be governed by
20 Division 9 (commencing with Section 9101) of the
21 Commercial Code.

22 (2) The intended debtor or secured party publishes a
23 notice of the transfer one time in a newspaper of general
24 circulation published in the judicial district in which the
25 personal property is located, if there is one, and if there
26 is none in the judicial district, then in a newspaper of
27 general circulation in the county embracing the judicial
28 district. The publication shall be completed not less than
29 10 days before the date of execution by the intended
30 debtor of the intended security agreement. The notice
31 shall contain the names and addresses of the transferor
32 and transferee and of the intended debtor and secured
33 party, a general statement of the character of the
34 personal property transferred and intended to be subject
35 to the security interest, the location of the personal
36 property, and the date on or after which the security
37 agreement is to be executed by the intended debtor.

38 SEC. 3. *Section 340.9 of the Code of Civil Procedure,*
39 *as added by Senate Bill 1899 of the 1999-2000 Regular*
40 *Session, is amended to read:*



1 340.9. (a) Notwithstanding any other provision of
2 law or contract, any insurance claim for damages arising
3 out of the Northridge earthquake of 1994 which is barred
4 as of the effective date of this section solely because the
5 applicable statute of limitations has or had expired is
6 hereby revived and a cause of action thereon may be
7 commenced provided that the action is commenced
8 within one year of the effective date of this section. This
9 subdivision shall only apply to cases in which an insured
10 contacted an insurer or an insurer's representative prior
11 to January 1, 2000, regarding potential Northridge
12 earthquake damage.

13 (b) Any action pursuant to this section commenced
14 prior to, or within one year from, the effective date of this
15 section shall not be barred based upon this limitations
16 period.

17 (c) Nothing in this section shall be construed to alter
18 the applicable limitations period of an action that is not
19 time barred as of the effective date of this section.

20 (d) This section shall not apply to either of the
21 following:

22 (1) Any claim that has been litigated to finality in any
23 court of competent jurisdiction prior to the effective date
24 of this section.

25 (2) Any written compromised settlement agreement
26 which has been made between an insurer and its insured
27 ~~where the insured was represented by counsel admitted~~
28 ~~to the practice of law in California at the time of the~~
29 ~~settlement, and who signed the agreement where the~~
30 *insured is fully informed of the nature and extent of*
31 *damages and the availability of coverage.*

32 *SEC. 4. Section 1201 of the Commercial Code is*
33 *amended to read:*

34 1201. The following definitions apply for purposes of
35 this code, subject to additional definitions contained in
36 the subsequent divisions of this code that apply to specific
37 divisions or chapters thereof, and unless the context
38 otherwise requires:

39 (1) "Action," in the sense of a judicial proceeding,
40 includes recoupment, counterclaim, setoff, suit in equity,



1 and any other proceedings in which rights are
2 determined.

3 (2) “Aggrieved party” means a party entitled to resort
4 to a remedy.

5 (3) “Agreement” means the bargain of the parties in
6 fact as found in their language or by implication from
7 other circumstances, including course of dealing, usage of
8 trade, and course of performance as provided in this code
9 (Sections 1205, 2208, and 10207). Whether an agreement
10 has legal consequences is determined by the provisions of
11 this code, if applicable, and otherwise by the law of
12 contracts (Section 1103). (Compare “contract.”)

13 (4) “Bank” means any person engaged in the business
14 of banking.

15 (5) “Bearer” means the person in possession of an
16 instrument, document of title, or certificated security
17 payable to bearer or ~~indorsed~~ *endorsed* in blank.

18 (6) “Bill of lading” means a document evidencing the
19 receipt of goods for shipment issued by a person engaged
20 in the business of transporting or forwarding goods, and
21 that, by its terms, evidences the intention of the issuer
22 that the person entitled under the document (Section
23 7403(4)) has the right to receive, hold, and dispose of the
24 document and the goods it covers. Designation of a
25 document by the issuer as a “bill of lading” is conclusive
26 evidence of that intention. “Bill of lading” includes an
27 airbill. “Airbill” means a document serving for air
28 transportation as a bill of lading does for marine or rail
29 transportation, and includes an air consignment note or
30 air waybill.

31 (7) “Branch” includes a separately incorporated
32 foreign branch of a bank.

33 (8) “Burden of establishing” a fact means the burden
34 of persuading the triers of fact that the existence of the
35 fact is more probable than its nonexistence.

36 (9) “Buyer in ordinary course of business” means a
37 person that buys goods in good faith, without knowledge
38 that the sale violates the rights of another person in the
39 goods, and in the ordinary course from a person, other
40 than a pawnbroker, in the business of selling goods of that



1 kind. A person buys goods in the ordinary course if the
2 sale to the person comports with the usual or customary
3 practices in the kind of business in which the seller is
4 engaged or with the seller's own usual or customary
5 practices. A person that sells oil, gas, or other minerals at
6 the wellhead or minehead is a person in the business of
7 selling goods of that kind. A buyer in the ordinary course
8 of business may buy for cash, by exchange of other
9 property, or on secured or unsecured credit, and may
10 acquire goods or documents of title under a preexisting
11 contract for sale. Only a buyer that takes possession of the
12 goods or has a right to recover the goods from the seller
13 under ~~Article~~ *Division 2* (commencing with Section
14 2101) may be a buyer in ordinary course of business. A
15 person that acquires goods in a transfer in bulk or as
16 security for or in total or partial satisfaction of a money
17 debt is not a buyer in ordinary course of business.

18 (10) "Conspicuous." A term or clause is conspicuous
19 when it is so written that a reasonable person against
20 whom it is to operate ought to have noticed it. A printed
21 heading in capitals (as: NONNEGOTIABLE BILL OF LADING)
22 is conspicuous. Language in the body of a form is
23 "conspicuous" if it is in larger or other contrasting type or
24 color, except that in a telegram any stated term is
25 "conspicuous." Whether a term or clause is
26 "conspicuous" or not is for decision by the court.

27 (11) "Contract" means the total legal obligation that
28 results from the parties' agreement as affected by this
29 code and any other applicable rules of law. (Compare
30 "agreement.")

31 (12) "Creditor" includes a general creditor, a secured
32 creditor, a lien creditor, and any representative of
33 creditors, including an assignee for the benefit of
34 creditors, a trustee in bankruptcy, a receiver in equity,
35 and an executor or administrator of an insolvent debtor's
36 or assignor's estate.

37 (13) "Defendant" includes a person in the position of
38 defendant in a cross-action or counterclaim.



1 (14) “Delivery,” with respect to instruments,
2 documents of title, chattel paper, or certificated
3 securities, means the voluntary transfer of possession.

4 (15) “Document of title” includes a bill of lading, dock
5 warrant, dock receipt, warehouse receipt, gin ticket, or
6 compress receipt, and any other document that, in the
7 regular course of business or financing, is treated as
8 adequately evidencing that the person entitled under the
9 document (Section 7403(4)) has the right to receive,
10 hold, and dispose of the document and the goods it covers.
11 To be a document of title, a document shall purport to be
12 issued by a bailee and purport to cover goods in the
13 bailee’s possession that either are identified as or are
14 fungible portions of an identified mass.

15 (16) “Fault” means wrongful act, omission, or breach.

16 (17) “Fungible,” with respect to goods or securities,
17 means goods or securities of which any unit is, by nature
18 or usage of trade, the equivalent of any other like unit.
19 Goods that are not fungible shall be deemed fungible for
20 the purposes of this code to the extent that, under a
21 particular agreement or document, unlike units are
22 treated as equivalents.

23 (18) “Genuine” means free of forgery or
24 counterfeiting.

25 (19) “Good faith” means honesty in fact in the conduct
26 or transaction concerned.

27 (20) “Holder,” with respect to a negotiable
28 instrument, means the person in possession if the
29 instrument is payable to bearer or, in the case of an
30 instrument payable to an identified person, if the
31 identified person is in possession. “Holder,” with respect
32 to a document of title, means the person in possession if
33 the goods are deliverable to bearer or to the order of the
34 person in possession.

35 (21) To “honor” is to pay or to accept and pay or,
36 where a credit so engages, to purchase or discount a draft
37 complying with the terms of the credit.

38 (22) “Insolvency proceedings” includes any
39 assignment for the benefit of creditors or other



1 proceedings intended to liquidate or rehabilitate the
2 estate of the person involved.

3 (23) A person is “insolvent” who either has ceased to
4 pay his or her debts in the ordinary course of business,
5 cannot pay his or her debts as they become due, or is
6 insolvent within the meaning of the federal bankruptcy
7 law.

8 (24) “Money” means a medium of exchange
9 authorized or adopted by a domestic or foreign
10 government and includes a monetary unit of account
11 established by an intergovernmental organization or by
12 agreement between two or more nations.

13 (25) A person has “notice” of a fact when any of the
14 following occurs:

15 (a) He or she has actual knowledge of it.

16 (b) He or she has received a notice or notification of
17 it.

18 (c) From all the facts and circumstances known to him
19 or her at the time in question, he or she has reason to know
20 that it exists. A person “knows” or has “knowledge” of a
21 fact when he or she has actual knowledge of it. “Discover”
22 or “learn,” or a word or phrase of similar import, refers to
23 knowledge rather than to reason to know. The time and
24 circumstances under which a notice or notification may
25 cease to be effective are not determined by this code.

26 (26) A person “notifies” or “gives” a notice or
27 notification to another by taking those steps that may be
28 reasonably required to inform the other in ordinary
29 course whether or not the other actually comes to know
30 of it. A person “receives” a notice or notification when
31 any of the following occurs:

32 (a) It comes to his or her attention.

33 (b) It is duly delivered at the place of business through
34 which the contract was made or at any other place held
35 out by him or her as the place for receipt of these
36 communications.

37 (27) Notice, knowledge, or a notice or notification
38 received by an organization is effective for a particular
39 transaction from the time it is brought to the attention of
40 the individual conducting that transaction and, in any



1 event, from the time it would have been brought to his
2 or her attention if the organization had exercised due
3 diligence. An organization exercises due diligence if it
4 maintains reasonable routines for communicating
5 significant information to the person conducting the
6 transaction and there is reasonable compliance with the
7 routines. Due diligence does not require an individual
8 acting for the organization to communicate information
9 unless the communication is part of his or her regular
10 duties, or unless he or she has reason to know of the
11 transaction and that the transaction would be materially
12 affected by the information.

13 (28) “Organization” includes a corporation,
14 government or governmental subdivision or agency,
15 business trust, estate, trust, partnership or association,
16 two or more persons having a joint or common interest,
17 or any other legal or commercial entity.

18 (29) “Party,” as distinct from “third party,” means a
19 person who has engaged in a transaction or made an
20 agreement within this division.

21 (30) “Person” includes an individual or an
22 organization. (See Section 1102.)

23 (31) “Purchase” includes taking by sale, discount,
24 negotiation, mortgage, pledge, lien, security interest,
25 issue or reissue, gift, or any other voluntary transaction
26 creating an interest in property.

27 (32) “Purchaser” means a person who takes by
28 purchase.

29 (33) “Remedy” means any remedial right to which an
30 aggrieved party is entitled with or without resort to a
31 tribunal.

32 (34) “Representative” includes an agent, an officer of
33 a corporation or association, a trustee, executor, or
34 administrator of an estate, or any other person
35 empowered to act for another.

36 (35) “Rights” includes remedies.

37 (36) (a) “Security interest” means an interest in
38 personal property or fixtures that secures payment or
39 performance of an obligation. The term also includes any
40 interest of a cosignor and a buyer of accounts, chattel



1 paper, a payment intangible, or a promissory note in a
2 transaction that is subject to Division 9 (commencing
3 with Section 9101). The special property interest of a
4 buyer of goods on identification of those goods to a
5 contract for sale under Section 2401 is not a “security
6 interest,” but a buyer may also acquire a “security
7 interest” by complying with Division 9 (commencing
8 with Section 9101). Except as otherwise provided in
9 Section 2505, the right of a seller or lessor of goods under
10 ~~Article Division 2~~ (commencing with Section 2101) or
11 ~~Article Division 10~~ (commencing with Section 10101) to
12 retain or acquire possession of the goods is not a “security
13 interest,” but a seller or lessor may also acquire a “security
14 interest” by complying with ~~Article Division 9~~
15 (commencing with Section 9101). The retention or
16 reservation of title by a seller of goods notwithstanding
17 shipment or delivery to the buyer (Section 2401) is
18 limited in effect to a reservation of a “security interest.”

19 (b) Whether a transaction creates a lease or security
20 interest is determined by the facts of each case. However,
21 a transaction creates a security interest if the
22 consideration the lessee is to pay the lessor for the right
23 to possession and use of the goods is an obligation for the
24 term of the lease not subject to termination by the lessee,
25 and any of the following conditions applies:

26 (i) The original term of the lease is equal to or greater
27 than the remaining economic life of the goods.

28 (ii) The lessee is bound to renew the lease for the
29 remaining economic life of the goods or is bound to
30 become the owner of the goods.

31 (iii) The lessee has an option to renew the lease for the
32 remaining economic life of the goods for no additional
33 consideration or nominal additional consideration upon
34 compliance with the lease agreement.

35 (iv) The lessee has an option to become the owner of
36 the goods for no additional consideration or nominal
37 additional consideration upon compliance with the lease
38 agreement.

39 (c) A transaction does not create a security interest
40 merely because it provides one or more of the following:

1 (i) That the present value of the consideration the
2 lessee is obligated to pay the lessor for the right to
3 possession and use of the goods is substantially equal to or
4 greater than the fair market value of the goods at the time
5 the lease is entered into.

6 (ii) That the lessee assumes *the* risk of loss of the goods,
7 or agrees to pay *the* taxes, insurance, filing, recording, or
8 registration fees, or service or maintenance costs with
9 respect to the goods.

10 (iii) That the lessee has an option to renew the lease or
11 to become the owner of the goods.

12 (iv) That the lessee has an option to renew the lease for
13 a fixed rent that is equal to or greater than the reasonably
14 predictable fair market rent for the use of the goods for
15 the term of the renewal at the time the option is to be
16 performed.

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

21 (vi) In the case of a motor vehicle, as defined in
22 Section 415 of the Vehicle Code, or a trailer, as defined in
23 Section 630 of that code, that is not to be used primarily
24 for personal, family, or household purposes, that the
25 amount of rental payments may be increased or
26 decreased by reference to the amount realized by the
27 lessor upon sale or disposition of the vehicle or trailer.
28 Nothing in this subparagraph affects the application or
29 administration of the Sales and Use Tax Law (Part 1
30 commencing with Section 6001), Division 2, Revenue
31 and Taxation Code).

32 (d) For purposes of this subdivision (36), all of the
33 following apply:

34 (i) Additional consideration is not nominal if (A) when
35 the option to renew the lease is granted to the lessee, the
36 rent is stated to be the fair market rent for the use of the
37 goods for the term of the renewal determined at the time
38 the option is to be performed, or (B) when the option to
39 become the owner of the goods is granted to the lessee,
40 the price is stated to be the fair market value of the goods



1 determined at the time the option is to be performed.
2 Additional consideration is nominal if it is less than the
3 lessee's reasonably predictable cost of performing under
4 the lease agreement if the option is not exercised.

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

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

18 (37) "Send," in connection with any writing or notice,
19 means to deposit in the mail or deliver for transmission by
20 any other usual means of communication with postage or
21 cost of transmission provided for and properly addressed
22 and, in the case of an instrument, to an address specified
23 thereon or otherwise agreed or, if there ~~be~~ is none, to any
24 address reasonable under the circumstances. The receipt
25 of any writing or notice within the time in which it would
26 have arrived if properly sent has the effect of a proper
27 sending. When a writing or notice is required to be sent
28 by registered or certified mail, proof of mailing is
29 sufficient, and proof of receipt by the addressee is not
30 required unless the words "with return receipt
31 requested" are also used.

32 (38) "Signed" includes any symbol executed or
33 adopted by a party with present intention to authenticate
34 a writing.

35 (39) "Surety" includes guarantor.

36 (40) "Telegram" includes a message transmitted by
37 radio, teletype, cable, any mechanical method of
38 transmission, or the like.

39 (41) "Term" means that portion of an agreement that
40 relates to a particular matter.



1 (42) “Unauthorized” signature means one made
2 without actual, implied, or apparent authority, and
3 includes a forgery.

4 (43) “Value.” Except as otherwise provided with
5 respect to negotiable instruments and bank collections
6 (Sections 3303, 4210, and 4211), a person gives “value” for
7 rights if he or she acquires them in any of the following
8 ways:

9 (a) In return for a binding commitment to extend
10 credit or for the extension of immediately available credit
11 whether or not drawn upon and whether or not a
12 chargeback is provided for in the event of difficulties in
13 collection.

14 (b) As security for, or in total or partial satisfaction of,
15 a preexisting claim.

16 (c) By accepting delivery pursuant to a preexisting
17 contract for purchase.

18 (d) Generally, in return for any consideration
19 sufficient to support a simple contract.

20 (44) “Warehouse receipt” means a document
21 evidencing the receipt of goods for storage issued by a
22 warehouseman (Section 7102), and that, by its terms,
23 evidences the intention of the issuer that the person
24 entitled under the document (Section 7403(4)) has the
25 right to receive, hold, and dispose of the document and
26 the goods it covers. Designation of a document by the
27 issuer as a “warehouse receipt” is conclusive evidence of
28 that intention.

29 (45) “Written” or “writing” includes printing,
30 typewriting, or any other intentional reduction to
31 tangible form.

32 *SEC. 5. Section 2210 of the Commercial Code is*
33 *amended to read:*

34 2210. (1) A party may perform his or her duty
35 through a delegate unless otherwise agreed or unless the
36 other party has a substantial interest in having his or her
37 original promisor perform or control the acts required by
38 the contract. No delegation of performance relieves the
39 party delegating of any duty to perform or any liability for
40 breach.



1 (2) Except as otherwise provided in Section 9406,
2 unless otherwise agreed, all rights of either seller or buyer
3 can be assigned except where the assignment would
4 materially change the duty of the other party, or increase
5 materially the burden or risk imposed on him or her by
6 his or her contract, or impair materially his or her chance
7 of obtaining return performance. A right to damages for
8 breach of the whole contract or a right arising out of the
9 assignor's due performance of his or her entire obligation
10 can be assigned despite agreement otherwise.

11 (3) The creation, attachment, perfection, or
12 enforcement of a security interest in the seller's interest
13 under a contract is not a transfer that materially changes
14 the duty of, or increases materially the burden or risk
15 imposed on, the buyer or impairs materially the buyer's
16 chance of obtaining return performance within the
17 purview of subdivision (2) unless, and then only to the
18 extent that, enforcement actually results in a delegation
19 of material performance of the seller. Even in that event,
20 the creation, attachment, perfection, and enforcement of
21 the security interest remain effective, but (A) the seller
22 is liable to the buyer for damages caused by the
23 delegation to the extent that the damages could not
24 reasonably be prevented by the buyer, and (B) a court
25 having jurisdiction may grant other appropriate relief,
26 including cancellation of the contract for sale or an
27 injunction against enforcement of the security interest or
28 consummation of the enforcement.

29 (4) Unless the circumstances indicate the contrary, a
30 prohibition of assignment of "the contract" is to be
31 construed as barring only the delegation to the assignee
32 of the assignor's performance.

33 (5) An assignment of "the contract" or of "all my rights
34 under the contract" or an assignment in similar general
35 terms is an assignment of rights and, unless the language
36 or the circumstances (as in an assignment for security)
37 indicate the contrary, it is a delegation of performance of
38 the duties of the assignor, and its acceptance by the
39 assignee constitutes a promise by him or her to perform



1 those duties. This promise is enforceable by either the
2 assignor or the other party to the original contract.

3 (6) The other party may treat any assignment which
4 delegates performance as creating reasonable grounds
5 for insecurity and may, without prejudice to his or her
6 rights against the assignor, demand assurances from the
7 assignee (Section 2609).

8 *SEC. 6. Section 2502 of the Commercial Code is*
9 *amended to read:*

10 2502. (1) Subject to subdivisions (2) and (3), and
11 even though the goods have not been shipped, a buyer
12 who has paid a part or all of the price of goods in which
13 he or she has a special property under the provisions of
14 the immediately preceding section may on making and
15 keeping good a tender of any unpaid portion of their price
16 recover them from the seller if either:

17 (a) In the case of goods bought for personal, family, or
18 household purposes, the seller repudiates or fails to
19 deliver as required by the contract.

20 (b) In all cases, the seller becomes insolvent within 10
21 days after receipt of the first installment on their price.

22 (2) The buyer's right to recover the goods under
23 paragraph (a) of subdivision (1) vests upon acquisition of
24 a special property, even if the seller had not then
25 repudiated or failed to deliver.

26 (3) If the identification creating his or her special
27 property has been made by the buyer, he or she acquires
28 the right to recover the goods only if they conform to the
29 contract for sale.

30 *SEC. 7. Section 9102 of the Commercial Code is*
31 *amended to read:*

32 9102. (a) In this division:

33 (1) "Accession" means goods that are physically
34 united with other goods in such a manner that the
35 identity of the original goods is not lost.

36 (2) "Account," except as used in "account for," means
37 a right to payment of a monetary obligation, whether or
38 not earned by performance, (i) for property that has
39 been or is to be sold, leased, licensed, assigned, or
40 otherwise disposed of, (ii) for services rendered or to be



1 rendered, (iii) for a policy of insurance issued or to be
2 issued, (iv) for a secondary obligation incurred or to be
3 incurred, (v) for energy provided or to be provided, (vi)
4 for the use or hire of a vessel under a charter or other
5 contract, (vii) arising out of the use of a credit or charge
6 card or information contained on or for use with the card,
7 or (viii) as winnings in a lottery or other game of chance
8 operated or sponsored by a state, governmental unit of a
9 state, or person licensed or authorized to operate the
10 game by a state or governmental unit of a state. The term
11 includes health care insurance receivables. The term
12 does not include (i) rights to payment evidenced by
13 chattel paper or an instrument, (ii) commercial tort
14 claims, (iii) deposit accounts, (iv) investment property,
15 (v) letter-of-credit rights or letters of credit, or (vi) rights
16 to payment for money or funds advanced or sold, other
17 than rights arising out of the use of a credit or charge card
18 or information contained on or for use with the card.

19 (3) “Account debtor” means a person obligated on an
20 account, chattel paper, or general intangible. The term
21 does not include persons obligated to pay a negotiable
22 instrument, even if the instrument constitutes part of
23 chattel paper.

24 (4) “Accounting,” except as used in “accounting for,”
25 means a record that is all of the following:

26 (A) Authenticated by a secured party.

27 (B) Indicating the aggregate unpaid secured
28 obligations as of a date not more than 35 days earlier or
29 35 days later than the date of the record.

30 (C) Identifying the components of the obligations in
31 reasonable detail.

32 (5) “Agricultural lien” means an interest, other than a
33 security interest, in farm products that meets all of the
34 following conditions:

35 (A) It secures payment or performance of an
36 obligation for either of the following:

37 (i) Goods or services furnished in connection with a
38 debtor’s farming operation.

39 (ii) Rent on real property leased by a debtor in
40 connection with its farming operation.



1 (B) It is created by statute in favor of a person that
2 does either of the following:

3 (i) In the ordinary course of its business furnished
4 goods or services to a debtor in connection with a debtor's
5 farming operation.

6 (ii) Leased real property to a debtor in connection
7 with the debtor's farming operation.

8 (C) Its effectiveness does not depend on the person's
9 possession of the personal property.

10 (6) "As-extracted collateral" means either of the
11 following:

12 (A) Oil, gas, or other minerals that are subject to a
13 security interest that does both of the following:

14 (i) Is created by a debtor having an interest in the
15 minerals before extraction.

16 (ii) Attaches to the minerals as extracted.

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

20 (7) "Authenticate" means to do either of the
21 following:

22 (A) To sign.

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

27 (8) "Bank" means an organization that is engaged in
28 the business of banking. The term includes savings banks,
29 savings and loan associations, credit unions, and trust
30 companies.

31 (9) "Cash proceeds" means proceeds that are money,
32 checks, deposit accounts, or the like.

33 (10) "Certificate of title" means a certificate of title
34 with respect to which a statute provides for the security
35 interest in question to be indicated on the certificate as
36 a condition or result of the security interest's obtaining
37 priority over the rights of a lien creditor with respect to
38 the collateral.

39 (11) "Chattel paper" means a record or records that
40 evidence both a monetary obligation and a security



1 interest in specific goods, a security interest in specific
2 goods and software used in the goods, a security interest
3 in specific goods and license of software used in the goods,
4 a lease of specific goods, or a lease of specific goods and
5 license of software used in the goods. In this paragraph,
6 “monetary obligation” means a monetary obligation
7 secured by the goods or owed under a lease of the goods
8 and includes a monetary obligation with respect to
9 software used in the goods. The term does not include (i)
10 charters or other contracts involving the use or hire of a
11 vessel or (ii) records that evidence a right to payment
12 arising out of the use of a credit or charge card or
13 information contained on or for use with the card. If a
14 transaction is evidenced by records that include an
15 instrument or series of instruments, the group of records
16 taken together constitutes chattel paper.

17 (12) “Collateral” means the property subject to a
18 security interest or agricultural lien. The term includes all
19 of the following:

20 (A) Proceeds to which a security interest attaches.

21 (B) Accounts, chattel paper, payment intangibles, and
22 promissory notes that have been sold.

23 (C) Goods that are the subject of a consignment.

24 (13) “Commercial tort claim” means a claim arising in
25 tort with respect to which either of the following
26 conditions is satisfied:

27 (A) The claimant is an organization.

28 (B) The claimant is an individual and both of the
29 following conditions are satisfied regarding the claim:

30 (i) It arose in the course of the claimant’s business or
31 profession.

32 (ii) It does not include damages arising out of personal
33 injury to or the death of an individual.

34 (14) “Commodity account” means an account
35 maintained by a commodity intermediary in which a
36 commodity contract is carried for a commodity customer.

37 (15) “Commodity contract” means a commodity
38 futures contract, an option on a commodity futures
39 contract, a commodity option, or another contract if the
40 contract or option is either of the following:



1 (A) Traded on or subject to the rules of a board of trade
2 that has been designated as a contract market for such a
3 contract pursuant to federal commodities laws.

4 (B) Traded on a foreign commodity board of trade,
5 exchange, or market, and is carried on the books of a
6 commodity intermediary for a commodity customer.

7 (16) “Commodity customer” means a person for
8 which a commodity intermediary carries a commodity
9 contract on its books.

10 (17) “Commodity intermediary” means a person that
11 is either of the following:

12 (A) Is registered as a futures commission merchant
13 under federal commodities law.

14 (B) In the ordinary course of its business provides
15 clearance or settlement services for a board of trade that
16 has been designated as a contract market pursuant to
17 federal commodities law.

18 (18) “Communicate” means to do any of the following:

19 (A) To send a written or other tangible record.

20 (B) To transmit a record by any means agreed upon by
21 the persons sending and receiving the record.

22 (C) In the case of transmission of a record to or by a
23 filing office, to transmit a record by any means prescribed
24 by filing-office rule.

25 (19) “Consignee” means a merchant to which goods
26 are delivered in a consignment.

27 (20) “Consignment” means a transaction, regardless
28 of its form, in which a person delivers goods to a merchant
29 for the purpose of sale and all of the following conditions
30 are satisfied:

31 (A) The merchant satisfies all of the following
32 conditions:

33 (i) He or she deals in goods of that kind under a name
34 other than the name of the person making delivery.

35 (ii) He or she is not an auctioneer.

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

38 (B) With respect to each delivery, the aggregate value
39 of the goods is one thousand dollars (\$1,000) or more at
40 the time of delivery.



1 (C) The goods are not consumer goods immediately
2 before delivery.

3 (D) The transaction does not create a security interest
4 that secures an obligation.

5 (21) “Consignor” means a person that delivers goods
6 to a consignee in a consignment.

7 (22) “Consumer debtor” means a debtor in a
8 consumer transaction.

9 (23) “Consumer goods” means goods that are used or
10 bought for use primarily for personal, family, or
11 household purposes.

12 (24) “Consumer-goods transaction” means a
13 consumer transaction in which both of the following
14 conditions are satisfied:

15 (A) An individual incurs an obligation primarily for
16 personal, family, or household purposes.

17 (B) A security interest in consumer goods secures the
18 obligation.

19 (25) “Consumer obligor” means an obligor who is an
20 individual and who incurred the obligation as part of a
21 transaction entered into primarily for personal, family, or
22 household purposes.

23 (26) “Consumer transaction” means a transaction in
24 which (i) an individual incurs an obligation primarily for
25 personal, family, or household purposes, (ii) a security
26 interest secures the obligation, and (iii) the collateral is
27 held or acquired primarily for personal, family, or
28 household purposes. The term includes consumer-goods
29 transactions.

30 (27) “Continuation statement” means an amendment
31 of a financing statement which does both of the following:

32 (A) Identifies, by its file number, the initial financing
33 statement to which it relates.

34 (B) Indicates that it is a continuation statement for, or
35 that it is filed to continue the effectiveness of, the
36 identified financing statement.

37 (28) “Debtor” means any of the following:

38 (A) A person having an interest, other than a security
39 interest or other lien, in the collateral, whether or not the
40 person is an obligor.



1 (B) A seller of accounts, chattel paper, payment
2 intangibles, or promissory notes.

3 (C) A consignee.

4 (29) “Deposit account” means a demand, time,
5 savings, passbook, or similar account maintained with a
6 bank. The term does not include investment property or
7 accounts evidenced by an instrument.

8 (30) “Document” means a document of title or a
9 receipt of the type described in subdivision (2) of Section
10 7201.

11 (31) “Electronic chattel paper” means chattel paper
12 evidenced by a record or records consisting of
13 information stored in an electronic medium.

14 (32) “Encumbrance” means a right, other than an
15 ownership interest, in real property. The term includes
16 mortgages and other liens on real property.

17 (33) “Equipment” means goods other than inventory,
18 farm products, or consumer goods.

19 (34) “Farm products” means goods, other than
20 standing timber, with respect to which the debtor is
21 engaged in a farming operation and which are any of the
22 following:

23 (A) Crops grown, growing, or to be grown, including
24 both of the following:

25 (i) Crops produced on trees, vines, and bushes.

26 (ii) Aquatic goods produced in aquacultural
27 operations.

28 (B) Livestock, born or unborn, including aquatic
29 goods produced in aquacultural operations.

30 (C) Supplies used or produced in a farming operation.

31 (D) Products of crops or livestock in their
32 unmanufactured states.

33 (35) “Farming operation” means raising, cultivating,
34 propagating, fattening, grazing, or any other farming,
35 livestock, or aquacultural operation.

36 (36) “File number” means the number assigned to an
37 initial financing statement pursuant to subdivision (a) of
38 Section 9519.

39 (37) “Filing office” means an office designated in
40 Section 9501 as the place to file a financing statement.



1 (38) “Filing-office rule” means a rule adopted
2 pursuant to Section 9526.

3 (39) “Financing statement” means a record or records
4 composed of an initial financing statement and any filed
5 record relating to the initial financing statement.

6 (40) “Fixture filing” means the filing of a financing
7 statement covering goods that are or are to become
8 fixtures and satisfying subdivisions (a) and (b) of Section
9 9502. The term includes the filing of a financing
10 statement covering goods of a transmitting utility which
11 are or are to become fixtures.

12 (41) “Fixtures” means goods that have become so
13 related to particular real property that an interest in
14 them arises under real property law.

15 (42) “General intangible” means any personal
16 property, including things in action, other than accounts,
17 chattel paper, commercial tort claims, deposit accounts,
18 documents, goods, instruments, investment property,
19 letter-of-credit rights, letters of credit, money, and oil,
20 gas, or other minerals before extraction. The term
21 includes payment intangibles and software.

22 (43) “Good faith” means honesty in fact and the
23 observance of reasonable commercial standards of fair
24 dealing.

25 (44) “Goods” means all things that are movable when
26 a security interest attaches. The term includes (i)
27 fixtures, (ii) standing timber that is to be cut and
28 removed under a conveyance or contract for sale, (iii) the
29 unborn young of animals, (iv) crops grown, growing, or
30 to be grown, even if the crops are produced on trees,
31 vines, or bushes, and (v) manufactured homes. The term
32 also includes a computer program embedded in goods
33 and any supporting information provided in connection
34 with a transaction relating to the program if (i) the
35 program is associated with the goods in such a manner
36 that it customarily is considered part of the goods, or (ii)
37 by becoming the owner of the goods, a person acquires a
38 right to use the program in connection with the goods.
39 The term does not include a computer program
40 embedded in goods that consist solely of the medium in



1 which the program is embedded. The term also does not
2 include accounts, chattel paper, commercial tort claims,
3 deposit accounts, documents, general intangibles,
4 instruments, investment property, letter-of-credit rights,
5 letters of credit, money, or oil, gas, or other minerals
6 before extraction.

7 (45) “Governmental unit” means a subdivision,
8 agency, department, county, parish, municipality, or
9 other unit of the government of the United States, a state,
10 or a foreign country. The term includes an organization
11 having a separate corporate existence if the organization
12 is eligible to issue debt on which interest is exempt from
13 income taxation under the laws of the United States.

14 (46) “Health care insurance receivable” means an
15 interest in or claim under a policy of insurance which is
16 a right to payment of a monetary obligation for health
17 care goods or services provided.

18 (47) “Instrument” means a negotiable instrument or
19 any other writing that evidences a right to the payment
20 of a monetary obligation, is not itself a security agreement
21 or lease, and is of a type that in ordinary course of business
22 is transferred by delivery with any necessary
23 indorsement or assignment. The term does not include
24 (i) investment property, (ii) letters of credit, or (iii)
25 writings that evidence a right to payment arising out of
26 the use of a credit or charge card or information
27 contained on or for use with the card.

28 (48) “Inventory” means goods, other than farm
29 products, which are any of the following:

30 (A) Leased by a person as lessor.

31 (B) Held by a person for sale or lease or to be furnished
32 under a contract of service.

33 (C) Furnished by a person under a contract of service.

34 (D) Consist of raw materials, work in process, or
35 materials used or consumed in a business.

36 (49) “Investment property” means a security,
37 whether certificated or uncertificated, security
38 entitlement, securities account, commodity contract, or
39 commodity account.



1 (50) “Jurisdiction of organization,” with respect to a
2 registered organization, means the jurisdiction under
3 whose law the organization is organized.

4 (51) “Letter-of-credit right” means a right to payment
5 or performance under a letter of credit, whether or not
6 the beneficiary has demanded or is at the time entitled to
7 demand payment or performance. The term does not
8 include the right of a beneficiary to demand payment or
9 performance under a letter of credit.

10 (52) (A) “Lien creditor” means any of the following:

11 (i) A creditor that has acquired a lien on the property
12 involved by attachment, levy, or the like.

13 (ii) An assignee for benefit of creditors from the time
14 of assignment.

15 (iii) A trustee in bankruptcy from the date of the filing
16 of the petition.

17 (iv) A receiver in equity from the time of
18 appointment.

19 (B) “Lien creditor” does not include a creditor who by
20 filing a notice with the Secretary of State has acquired
21 only an attachment or judgment lien on personal
22 property, or both.

23 (53) “Manufactured home” means a structure,
24 transportable in one or more sections, which, in the
25 traveling mode, is eight body-feet or more in width or 40
26 body-feet or more in length, or, when erected on site, is
27 320 or more square feet, and which is built on a
28 permanent chassis and designed to be used as a dwelling
29 with or without a permanent foundation when connected
30 to the required utilities, and includes the plumbing,
31 heating, air-conditioning, and electrical systems
32 contained therein. The term includes any structure that
33 meets all of the requirements of this paragraph except the
34 size requirements and with respect to which the
35 manufacturer voluntarily files a certification required by
36 the United States Secretary of Housing and Urban
37 Development and complies with the standards
38 established under Title 42 of the United States Code.

39 (54) “Manufactured home transaction” means a
40 secured transaction that satisfies either of the following:



1 (A) It creates a purchase money security interest in a
2 manufactured home, other than a manufactured home
3 held as inventory.

4 (B) It is a secured transaction in which a
5 manufactured home, other than a manufactured home
6 held as inventory, is the primary collateral.

7 (55) “Mortgage” means a consensual interest in real
8 property, including fixtures, which secures payment or
9 performance of an obligation.

10 (56) “New debtor” means a person that becomes
11 bound as debtor under subdivision (d) of Section 9203 by
12 a security agreement previously entered into by another
13 person.

14 (57) “New value” means (i) money, (ii) money’s
15 worth in property, services, or new credit, or (iii) release
16 by a transferee of an interest in property previously
17 transferred to the transferee. The term does not include
18 an obligation substituted for another obligation.

19 (58) “Noncash proceeds” means proceeds other than
20 cash proceeds.

21 (59) “Obligor” means a person that, with respect to an
22 obligation secured by a security interest in or an
23 agricultural lien on the collateral, (i) owes payment or
24 other performance of the obligation, (ii) has provided
25 property other than the collateral to secure payment or
26 other performance of the obligation, or (iii) is otherwise
27 accountable in whole or in part for payment or other
28 performance of the obligation. The term does not include
29 issuers or nominated persons under a letter of credit.

30 (60) “Original debtor,” except as used in subdivision
31 (c) of Section 9310, means a person that, as debtor,
32 entered into a security agreement to which a new debtor
33 has become bound under subdivision (d) of Section 9203.

34 (61) “Payment intangible” means a general intangible
35 under which the account debtor’s principal obligation is
36 a monetary obligation.

37 (62) “Person related to,” with respect to an individual,
38 means any of the following:

39 (A) The spouse of the individual.



1 (B) A brother, brother-in-law, sister, or sister-in-law of
2 the individual.

3 (C) An ancestor or lineal descendant of the individual
4 or the individual's spouse.

5 (D) Any other relative, by blood or marriage, of the
6 individual or the individual's spouse who shares the same
7 home with the individual.

8 (63) "Person related to," with respect to an
9 organization, means any of the following:

10 (A) A person directly or indirectly controlling,
11 controlled by, or under common control with the
12 organization.

13 (B) An officer or director of, or a person performing
14 similar functions with respect to, the organization.

15 (C) An officer or director of, or a person performing
16 similar functions with respect to, a person described in
17 subparagraph (A).

18 (D) The spouse of an individual described in
19 subparagraph (A), (B), or (C).

20 (E) An individual who is related by blood or marriage
21 to an individual described in subparagraph (A), (B), (C),
22 or (D) and shares the same home with the individual.

23 (64) "Proceeds," except as used in subdivision (b) of
24 Section 9609, means any of the following property:

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

27 (B) Whatever is collected on, or distributed on
28 account of, collateral.

29 (C) Rights arising out of collateral.

30 (D) To the extent of the value of collateral, claims
31 arising out of the loss, nonconformity, or interference
32 with the use of, defects or infringement of rights in, or
33 damage to, the collateral.

34 (E) To the extent of the value of collateral and to the
35 extent payable to the debtor or the secured party,
36 insurance payable by reason of the loss or nonconformity
37 of, defects or infringement of rights in, or damage to, the
38 collateral.

39 (65) "Promissory note" means an instrument that
40 evidences a promise to pay a monetary obligation, does



1 not evidence an order to pay, and does not contain an
2 acknowledgment by a bank that the bank has received for
3 deposit a sum of money or funds.

4 (66) “Proposal” means a record authenticated by a
5 secured party that includes the terms on which the
6 secured party is willing to accept collateral in full or
7 partial satisfaction of the obligation it secures pursuant to
8 Sections 9620, 9621, and 9622.

9 (67) “Public finance transaction” means a secured
10 transaction in connection with which all of the following
11 conditions are satisfied:

12 (A) Debt securities are issued.

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

15 (C) The debtor, obligor, secured party, account
16 debtor or other person obligated on collateral, assignor or
17 assignee of a secured obligation, or assignor or assignee of
18 a security interest is a state or a governmental unit of a
19 state.

20 (68) “Pursuant to commitment,” with respect to an
21 advance made or other value given by a secured party,
22 means pursuant to the secured party’s obligation,
23 whether or not a subsequent event of default or other
24 event not within the secured party’s control has relieved
25 or may relieve the secured party from its obligation.

26 (69) “Record,” except as used in “for record,” “of
27 record,” “record or legal title,” and “record owner,”
28 means information that is inscribed on a tangible medium
29 or which is stored in an electronic or other medium and
30 is retrievable in perceivable form.

31 (70) “Registered organization” means an organization
32 organized solely under the law of a single state or the
33 United States and as to which the state or the United
34 States must maintain a public record showing the
35 organization to have been organized.

36 (71) “Secondary obligor” means an obligor to the
37 extent that either of the following conditions are satisfied:

38 (A) The obligor’s obligation is secondary.



1 (B) The obligor has a right of recourse with respect to
2 an obligation secured by collateral against the debtor,
3 another obligor, or property of either.

4 (72) “Secured party” means any of the following:

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

9 (B) A person that holds an agricultural lien.

10 (C) A consignor.

11 (D) A person to which accounts, chattel paper,
12 payment intangibles, or promissory notes have been sold.

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

16 (F) A person that holds a security interest arising
17 under Section 2401, 2505, 4210, or 5118, or under
18 subdivision (3) of Section 2711 or subdivision (5) of
19 Section 10508.

20 (73) “Security agreement” means an agreement that
21 creates or provides for a security interest.

22 (74) “Send,” in connection with a record or
23 notification, means to do either of the following:

24 (A) To deposit in the mail, deliver for transmission, or
25 transmit by any other usual means of communication,
26 with postage or cost of transmission provided for,
27 addressed to any address reasonable under the
28 circumstances.

29 (B) To cause the record or notification to be received
30 within the time that it would have been received if
31 properly sent under subparagraph (A).

32 (75) “Software” means a computer program and any
33 supporting information provided in connection with a
34 transaction relating to the program. The term does not
35 include a computer program that is included in the
36 definition of goods.

37 (76) “State” means a state of the United States, the
38 District of Columbia, Puerto Rico, the United States
39 Virgin Islands, or any territory or insular possession
40 subject to the jurisdiction of the United States.



1 (77) “Supporting obligation” means a letter-of-credit
2 right or secondary obligation that supports the payment
3 or performance of an account, chattel paper, document,
4 general intangible, instrument, or investment property.

5 (78) “Tangible chattel paper” means chattel paper
6 evidenced by a record or records consisting of
7 information that is inscribed on a tangible medium.

8 (79) “Termination statement” means an amendment
9 of a financing statement that does both of the following:

10 (A) Identifies, by its file number, the initial financing
11 statement to which it relates.

12 (B) Indicates either that it is a termination statement
13 or that the identified financing statement is no longer
14 effective.

15 (80) “Transmitting utility” means a person primarily
16 engaged in the business of any of the following:

17 (A) Operating a railroad, subway, street railway, or
18 trolley bus.

19 (B) Transmitting communications electrically,
20 electromagnetically, or by light.

21 (C) Transmitting goods by pipeline or sewer.

22 (D) Transmitting or producing and transmitting
23 electricity, steam, gas, or water.

24 (b) The following definitions in other divisions apply
25 to this division:

- 26
- 27 “Applicant” Section 5102.
- 28 “Beneficiary” Section 5102.
- 29 “Broker” Section 8102.
- 30 “Certificated security” Section 8102.
- 31 “Check” Section 3104.
- 32 “Clearing corporation” Section 8102.
- 33 “Contract for sale” Section 2106.
- 34 “Customer” Section 4104.
- 35 “Entitlement holder” Section 8102.
- 36 “Financial asset” Section 8102.
- 37 “Holder in due course” Section 3302.
- 38 “Issuer” (with respect to a letter of credit or
- 39 letter-of-credit right) Section 5102.
- 40 “Issuer” (with respect to a security) Section 8201.



1	“Lease”	Section 10103.
2	“Lease agreement”	Section 10103.
3	“Lease contract”	Section 10103.
4	“Leasehold interest”	Section 10103.
5	“Lessee”	Section 10103.
6	“Lessee in ordinary course of business”	Section 10103.
7	“Lessor”	Section 10103.
8	“Lessor’s residual interest”	Section 10103.
9	“Letter of credit”	Section 5102.
10	“Merchant”	Section 2104.
11	“Negotiable instrument”	Section 3104.
12	“Nominated person”	Section 5102.
13	“Note”	Section 3104.
14	“Proceeds of a letter of credit”	Section 5114.
15	“Prove”	Section 3103.
16	“Sale”	Section 2106.
17	“Securities account”	Section 8501.
18	“Securities intermediary”	Section 8102.
19	“Security”	Section 8102.
20	“Security certificate”	Section 8102.
21	“Security entitlement”	Section 8102.
22	“Uncertificated security”	Section 8102.

23
24 (c) Division 1 (commencing with Section 1101)
25 contains general definitions and principles of
26 construction and interpretation applicable throughout
27 this division.

28 ~~SEC. 4.—~~

29 *SEC. 8. Section 9104 of the Commercial Code, as*
30 *added by Section 35 of Chapter 991 of the Statutes of 1999,*
31 *is amended to read:*

32 9104. (a) A secured party has control of a deposit
33 account if any of the following conditions is satisfied:

34 (1) The secured party is the bank with which the
35 deposit account is maintained.

36 (2) The debtor, secured party, and bank have agreed
37 in an authenticated record that the bank will comply with
38 instructions originated by the secured party directing
39 disposition of the funds in the *deposit* account without
40 further consent by the debtor.



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

3 (b) A secured party that has satisfied subdivision (a)
4 has control, even if the debtor retains the right to direct
5 the disposition of funds from the deposit account.

6 *SEC. 9.* Section 9205 of the Commercial Code, as
7 added by Section 35 of Chapter 991 of the Statutes of 1999,
8 is amended to read:

9 9205. (a) A security interest is not invalid or
10 fraudulent against creditors solely because either of the
11 following applies:

12 (1) The debtor has the right or ability to do any of the
13 following:

14 (A) Use, commingle, or dispose of all or part of the
15 collateral, including returned or repossessed goods.

16 (B) Collect, compromise, enforce, or otherwise deal
17 with collateral.

18 (C) Accept the return of collateral or make
19 repossessions.

20 (D) Use, commingle, or dispose of proceeds.

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

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

27 ~~SEC. 5.—~~

28 *SEC. 10.* Section 9210 of the Commercial Code is
29 amended to read:

30 9210. (a) In this section:

31 (1) "Request" means a record of a type described in
32 paragraph (2), (3), or (4).

33 (2) "Request for an accounting" means a record
34 authenticated by a debtor requesting that the recipient
35 provide an accounting of the unpaid obligations secured
36 by collateral and reasonably identifying the transaction or
37 relationship that is the subject of the request.

38 (3) "Request regarding a list of collateral" means a
39 record authenticated by a debtor requesting that the
40 recipient approve or correct a list of what the debtor



1 believes to be the collateral securing an obligation and
2 reasonably identifying the transaction or relationship that
3 is the subject of the request.

4 (4) “Request regarding a statement of account”
5 means a record authenticated by a debtor requesting that
6 the recipient approve or correct a statement indicating
7 what the debtor believes to be the aggregate amount of
8 unpaid obligations secured by collateral as of a specified
9 date and reasonably identifying the transaction or
10 relationship that is the subject of the request.

11 (b) Subject to subdivisions (c), (d), (e), and (f), a
12 secured party, other than a buyer of accounts, chattel
13 paper, payment intangibles, or promissory notes or a
14 consignor, shall comply with a request within 14 days
15 after receipt as follows:

16 (1) In the case of a request for an accounting, by
17 authenticating and sending to the debtor an accounting.

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

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

27 (d) A person that receives a request regarding a list of
28 collateral, claims no interest in the collateral when it
29 receives the request, and claimed an interest in the
30 collateral at an earlier time shall comply with the request
31 within 14 days after receipt by sending to the debtor an
32 authenticated record that contains both of the following:

33 (1) It disclaims any interest in the collateral.

34 (2) If known to the recipient, it provides the name and
35 mailing address of any assignee of or successor to the
36 recipient’s interest in the collateral.

37 (e) A person that receives a request for an accounting
38 or a request regarding a statement of account, claims no
39 interest in the obligations when it receives the request,
40 and claimed an interest in the obligations at an earlier



1 time shall comply with the request within 14 days after
2 receipt by sending to the debtor an authenticated record
3 that contains both of the following:

4 (1) It disclaims any interest in the obligations.

5 (2) If known to the recipient, it provides the name and
6 mailing address of any assignee of or successor to the
7 recipient's interest in the obligations.

8 (f) A debtor is entitled without charge to one response
9 to a request under this section during any six-month
10 period. The secured party may require payment of a
11 charge not exceeding twenty-five dollars (\$25) for each
12 additional response.

13 ~~SEC. 6.—~~

14 *SEC. 11.* Section 9307 of the Commercial Code, as
15 added by Section 35 of Chapter 991 of the Statutes of 1999,
16 is amended to read:

17 9307. (a) In this section, “place of business” means a
18 place where a debtor conducts its affairs.

19 (b) Except as otherwise provided in this section, the
20 following rules determine a debtor's location:

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

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

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

28 (c) Subdivision (b) applies only if a debtor's residence,
29 place of business, or chief executive office, as applicable,
30 is located in a jurisdiction whose law generally requires
31 information concerning the existence of a nonpossessory
32 security interest to be made generally available in a filing,
33 recording, or registration system as a condition or result
34 of the security interest's obtaining priority over the rights
35 of a lien creditor with respect to the collateral. If
36 subdivision (b) does not apply, the debtor is located in the
37 District of Columbia.

38 (d) A person that ceases to exist, have a residence, or
39 have a place of business continues to be located in the
40 jurisdiction specified by subdivisions (b) and (c).



1 (e) A registered organization that is organized under
2 the law of a state is located in that state.

3 (f) Except as otherwise provided in subdivision (i), a
4 registered organization that is organized under the law of
5 the United States and a branch or agency of a bank that
6 is not organized under the law of the United States or a
7 state are located in any of the following jurisdictions:

8 (1) In the state that the law of the United States
9 designates, if the law designates a state of location.

10 (2) In the state that the registered organization,
11 branch, or agency designates, if the law of the United
12 States authorizes the registered organization, branch, or
13 agency to designate its state of location.

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

16 (g) A registered organization continues to be located
17 in the jurisdiction specified by subdivision (e) or (f)
18 notwithstanding either of the following:

19 (1) The suspension, revocation, forfeiture, or lapse of
20 the registered organization's status as such in its
21 jurisdiction of organization.

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

24 (h) The United States is located in the District of
25 Columbia.

26 (i) A branch or agency of a bank that is not organized
27 under the law of the United States or a state is located in
28 the state in which the branch or agency is licensed, if all
29 branches and agencies of the bank are licensed in only
30 one state.

31 (j) A foreign air carrier under the Federal Aviation
32 Act of 1958, as amended, is located at the designated office
33 of the agent upon which service of process may be made
34 on behalf of the carrier.

35 (k) This section applies only for purposes of this
36 chapter.

37 ~~SEC. 7.—~~

38 *SEC. 12.* Section 9311 of the Commercial Code, as
39 added by Section 35 of Chapter 991 of the Statutes of 1999,
40 is amended to read:



1 9311. (a) Except as otherwise provided in
2 subdivision (d), the filing of a financing statement is not
3 necessary or effective to perfect a security interest in
4 property subject to any of the following:

5 (1) A statute, regulation, or treaty of the United States
6 whose requirements for a security interest's obtaining
7 priority over the rights of a lien creditor with respect to
8 the property preempt subdivision (a) of Section 9310.

9 (2) (A) The provisions of the Vehicle Code which
10 require registration of a vehicle or boat.

11 (B) The provisions of the Health and Safety Code
12 which require registration of a mobilehome or
13 commercial coach, except that during any period in
14 which collateral is inventory, the filing provisions of
15 Chapter 5 (commencing with Section 9501) apply to a
16 security interest in that collateral.

17 (C) The provisions of the Health and Safety Code
18 which require registration of all interests in approved air
19 contaminant emission reductions (Sections 40709 to
20 40713, inclusive, of the Health and Safety Code).

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

26 (b) Compliance with the requirements of a statute,
27 regulation, or treaty described in subdivision (a) for
28 obtaining priority over the rights of a lien creditor is
29 equivalent to the filing of a financing statement under
30 this division. Except as otherwise provided in subdivision
31 (d), in Section 9313, and in subdivisions (d) and (e) of
32 Section 9316 for goods covered by a certificate of title, a
33 security interest in property subject to a statute,
34 regulation, or treaty described in subdivision (a) may be
35 perfected only by compliance with those requirements,
36 and a security interest so perfected remains perfected
37 notwithstanding a change in the use or transfer of
38 possession of the collateral.

39 (c) Except as otherwise provided in subdivision (d)
40 and in subdivisions (d) and (e) of Section 9316, duration



1 and renewal of perfection of a security interest perfected
2 by compliance with the requirements prescribed by a
3 statute, regulation, or treaty described in subdivision (a)
4 are governed by the statute, regulation, or treaty. In other
5 respects, the security interest is subject to this division.

6 (d) During any period in which collateral subject to a
7 statute specified in paragraph (2) of subdivision (a) is
8 inventory held for sale or lease by a person or leased by
9 that person as lessor and that person is in the business of
10 selling goods of that kind, this section does not apply to a
11 security interest in that collateral created by that person.

12 ~~SEC. 8.—~~

13 *SEC. 13.* Section 9317 of the Commercial Code is
14 amended to read:

15 9317. (a) A security interest or agricultural lien is
16 subordinate to the rights of both of the following:

17 (1) A person entitled to priority under Section 9322.

18 (2) Except as otherwise provided in subdivision (e), a
19 person that becomes a lien creditor before the earlier of
20 the time the security interest or agricultural lien is
21 perfected, or one of the conditions specified in paragraph
22 (3) of subdivision (b) of Section 9203 is met and a
23 financing statement covering the collateral is filed.

24 (b) Except as otherwise provided in subdivision (e), a
25 buyer, other than a secured party, of tangible chattel
26 paper, documents, goods, instruments, or a security
27 certificate takes free of a security interest or agricultural
28 lien if the buyer gives value and receives delivery of the
29 collateral without knowledge of the security interest or
30 agricultural lien and before it is perfected.

31 (c) Except as otherwise provided in subdivision (e), a
32 lessee of goods takes free of a security interest or
33 agricultural lien if the lessee gives value and receives
34 delivery of the collateral without knowledge of the
35 security interest or agricultural lien and before it is
36 perfected.

37 (d) A licensee of a general intangible or a buyer, other
38 than a secured party, of accounts, electronic chattel
39 paper, general intangibles, or investment property other
40 than a certificated security takes free of a security interest



1 if the licensee or buyer gives value without knowledge of
2 the security interest and before it is perfected.

3 (e) Except as otherwise provided in Sections 9320 and
4 9321, if a person files a financing statement with respect
5 to a purchase money security interest before or within 20
6 days after the debtor receives delivery of the collateral,
7 the security interest takes priority over the rights of a
8 buyer, lessee, or lien creditor which arise between the
9 time the security interest attaches and the time of filing.

10 ~~SEC. 9.—~~

11 *SEC. 14.* Section 9319 of the Commercial Code is
12 amended to read:

13 9319. (a) Except as otherwise provided in
14 subdivision (b), for purposes of determining the rights of
15 creditors of, and purchasers for value of goods from, a
16 consignee, while the goods are in the possession of the
17 consignee, the consignee is deemed to have rights and
18 title to the goods identical to those the consignor had or
19 had power to transfer.

20 (b) For purposes of determining the rights of a
21 creditor of a consignee, law other than this division
22 determines the rights and title of a consignee while goods
23 are in the consignee's possession if, under this chapter, a
24 perfected security interest held by the consignor would
25 have priority over the rights of the creditor.

26 ~~SEC. 10.—~~

27 *SEC. 15.* Section 9323 of the Commercial Code is
28 amended to read:

29 9323. (a) Except as otherwise provided in
30 subdivision (c), for purposes of determining the priority
31 of a perfected security interest under paragraph (1) of
32 subdivision (a) of Section 9322, perfection of the security
33 interest dates from the time an advance is made to the
34 extent that the security interest secures an advance that
35 satisfies both of the following conditions:

36 (1) It is made while the security interest is perfected
37 only under either of the following:

38 (A) Under Section 9309 when it attaches.

39 (B) Temporarily under subdivision (e), (f), or (g) of
40 Section 9312.



1 (2) It is not made pursuant to a commitment entered
2 into before or while the security interest is perfected by
3 a method other than under Section 9309 or under
4 subdivision (e), (f), or (g) of Section 9312.

5 (b) Except as otherwise provided in subdivision (c), a
6 security interest is subordinate to the rights of a person
7 that becomes a lien creditor to the extent that the security
8 interest secures an advance made more than 45 days after
9 the person becomes a lien creditor unless either of the
10 following conditions is satisfied:

11 (1) The advance is made without knowledge of the
12 lien.

13 (2) The advance is made pursuant to a commitment
14 entered into without knowledge of the lien.

15 (c) Subdivisions (a) and (b) do not apply to a security
16 interest held by a secured party that is a buyer of
17 accounts, chattel paper, payment intangibles, or
18 promissory notes or a consignor.

19 (d) Except as otherwise provided in subdivision (e), a
20 buyer of goods other than a buyer in ordinary course of
21 business takes free of a security interest to the extent that
22 it secures advances made after the earlier of the
23 following:

24 (1) The time the secured party acquires knowledge of
25 the buyer's purchase.

26 (2) Forty-five days after the purchase.

27 (e) Subdivision (d) does not apply if the advance is
28 made pursuant to a commitment entered into without
29 knowledge of the buyer's purchase and before the
30 expiration of the 45-day period.

31 (f) Except as otherwise provided in subdivision (g), a
32 lessee of goods, other than a lessee in ordinary course of
33 business, takes the leasehold interest free of a security
34 interest to the extent that it secures advances made after
35 the earlier of either of the following:

36 (1) The time the secured party acquires knowledge of
37 the lease.

38 (2) Forty-five days after the lease contract becomes
39 enforceable.



1 (g) Subdivision (f) does not apply if the advance is
2 made pursuant to a commitment entered into without
3 knowledge of the lease and before the expiration of the
4 45-day period.

5 ~~SEC. 11.—~~

6 *SEC. 16.* Section 9325 of the Commercial Code is
7 amended to read:

8 9325. (a) Except as otherwise provided in
9 subdivision (b), a security interest created by a debtor is
10 subordinate to a security interest in the same collateral
11 created by another person if all of the following apply:

12 (1) The debtor acquired the collateral subject to the
13 security interest created by the other person.

14 (2) The security interest created by the other person
15 was perfected when the debtor acquired the collateral.

16 (3) There is no period thereafter when the security
17 interest is unperfected.

18 (b) Subdivision (a) subordinates a security interest
19 only if either of the following conditions is satisfied:

20 (1) The security interest otherwise would have
21 priority solely under subdivision (a) of Section 9322 or
22 under Section 9324.

23 (2) The security interest arose solely under
24 subdivision (3) of Section 2711 or subdivision (5) of
25 Section 10508.

26 ~~SEC. 12.—~~

27 *SEC. 17.* Section 9331 of the Commercial Code is
28 amended to read:

29 9331. (a) This division does not limit the rights of a
30 holder in due course of a negotiable instrument, a holder
31 to which a negotiable document of title has been duly
32 negotiated, or a protected purchaser of a security. These
33 holders or purchasers take priority over an earlier
34 security interest, even if perfected, to the extent
35 provided in Division 3 (commencing with Section 3101),
36 Division 7 (commencing with Section 7101), and Division
37 8 (commencing with Section 8101).

38 (b) This division does not limit the rights of or impose
39 liability on a person to the extent that the person is



1 protected against the assertion of a claim under Division
2 8 (commencing with Section 8101).

3 (c) Filing under this division does not constitute notice
4 of a claim or defense to the holders, or purchasers, or
5 persons described in subdivisions (a) and (b).

6 ~~SEC. 13.—~~

7 *SEC. 18.* Section 9336 of the Commercial Code is
8 amended to read:

9 9336. (a) In this section, “commingled goods” means
10 goods that are physically united with other goods in such
11 a manner that their identity is lost in a product or mass.

12 (b) A security interest does not exist in commingled
13 goods as such. However, a security interest may attach to
14 a product or mass that results when goods become
15 commingled goods.

16 (c) If collateral becomes commingled goods, a security
17 interest attaches to the product or mass.

18 (d) If a security interest in collateral is perfected
19 before the collateral becomes commingled goods, the
20 security interest that attaches to the product or mass
21 under subdivision (c) is perfected.

22 (e) Except as otherwise provided in subdivision (f),
23 the other provisions of this chapter determine the
24 priority of a security interest that attaches to the product
25 or mass under subdivision (c).

26 (f) If more than one security interest attaches to the
27 product or mass under subdivision (c), the following rules
28 determine priority:

29 (1) A security interest that is perfected under
30 subdivision (d) has priority over a security interest that
31 is unperfected at the time the collateral becomes
32 commingled goods.

33 (2) If more than one security interest is perfected
34 under subdivision (d), the security interests rank equally
35 in proportion to the value of the collateral at the time it
36 became commingled goods.

37 ~~SEC. 14.—~~

38 *SEC. 19.* Section 9403 of the Commercial Code, as
39 added by Section 35 of Chapter 991 of the Statutes of 1999,
40 is repealed.



1 ~~SEC. 15.~~

2 *SEC. 20.* Section 9403 of the Commercial Code, as
3 amended by Section 14 of Chapter 1000 of the Statutes of
4 1999, is repealed.

5 ~~SEC. 16.~~

6 *SEC. 21.* Section 9403 is added to the Commercial
7 Code, to read:

8 9403. (a) In this section, “value” has the meaning
9 provided in subdivision (a) of Section 3303.

10 (b) Except as otherwise provided in this section, an
11 agreement between an account debtor and an assignor
12 not to assert against an assignee any claim or defense that
13 the account debtor may have against the assignor is
14 enforceable by an assignee that takes an assignment that
15 satisfies all of the following conditions:

16 (1) It is taken for value.

17 (2) It is taken in good faith.

18 (3) It is taken without notice of a claim of a property
19 or possessory right to the property assigned.

20 (4) It is taken without notice of a defense or claim in
21 recoupment of the type that may be asserted against a
22 person entitled to enforce a negotiable instrument under
23 subdivision (a) of Section 3305.

24 (c) Subdivision (b) does not apply to defenses of a type
25 that may be asserted against a holder in due course of a
26 negotiable instrument under subdivision (b) of Section
27 3305.

28 (d) In a consumer transaction, if a record evidences
29 the account debtor’s obligation, law other than this
30 division requires that the record include a statement to
31 the effect that the rights of an assignee are subject to
32 claims or defenses that the account debtor could assert
33 against the original obligee, and the record does not
34 include such a statement, then both of the following
35 apply:

36 (1) The record has the same effect as if the record
37 included such a statement.

38 (2) The account debtor may assert against an assignee
39 those claims and defenses that would have been available
40 if the record included such a statement.



1 (e) This section is subject to law other than this
2 division which establishes a different rule for an account
3 debtor who is an individual and who incurred the
4 obligation primarily for personal, family, or household
5 purposes.

6 (f) Except as otherwise provided in subdivision (d),
7 this section does not displace law other than this division
8 which gives effect to an agreement by an account debtor
9 not to assert a claim or defense against an assignee.

10 ~~SEC. 17.—~~

11 *SEC. 22.* Section 9404 of the Commercial Code, as
12 added by Section 35 of Chapter 991 of the Statutes of 1999,
13 is repealed.

14 ~~SEC. 18.—~~

15 *SEC. 23.* Section 9404 of the Commercial Code, as
16 amended by Section 15 of Chapter 1000 of the Statutes of
17 1999, is repealed.

18 ~~SEC. 19.—~~

19 *SEC. 24.* Section 9404 is added to the Commercial
20 Code, to read:

21 9404. (a) Unless an account debtor has made an
22 enforceable agreement not to assert defenses or claims,
23 and subject to subdivisions (b) to (e), inclusive, the rights
24 of an assignee are subject to both of the following:

25 (1) All terms of the agreement between the account
26 debtor and assignor and any defense or claim in
27 recoupment arising from the transaction that gave rise to
28 the contract.

29 (2) Any other defense or claim of the account debtor
30 against the assignor which accrues before the account
31 debtor receives a notification of the assignment
32 authenticated by the assignor or the assignee.

33 (b) Subject to subdivision (c) and except as otherwise
34 provided in subdivision (d), the claim of an account
35 debtor against an assignor may be asserted against an
36 assignee under subdivision (a) only to reduce the amount
37 the account debtor owes.

38 (c) This section is subject to law other than this
39 division which establishes a different rule for an account
40 debtor who is an individual and who incurred the



1 obligation primarily for personal, family, or household
2 purposes.

3 (d) In a consumer transaction, if a record evidences
4 the account debtor's obligation, law other than this
5 division requires that the record include a statement to
6 the effect that the account debtor's recovery against an
7 assignee with respect to claims and defenses against the
8 assignor may not exceed amounts paid by the account
9 debtor under the record, and the record does not include
10 such a statement, the extent to which a claim of an
11 account debtor against the assignor may be asserted
12 against an assignee is determined as if the record included
13 such a statement.

14 (e) This section does not apply to an assignment of a
15 health care insurance receivable.

16 ~~SEC. 20.—~~

17 *SEC. 25.* Section 9405 of the Commercial Code, as
18 added by Section 35 of Chapter 991 of the Statutes of 1999,
19 is repealed.

20 ~~SEC. 21.—~~

21 *SEC. 26.* Section 9405 of the Commercial Code, as
22 amended by Section 16 of Chapter 1000 of the Statutes of
23 1999, is repealed.

24 ~~SEC. 22.—~~

25 *SEC. 27.* Section 9405 is added to the Commercial
26 Code, to read:

27 9405. (a) A modification of or substitution for an
28 assigned contract is effective against an assignee if made
29 in good faith. The assignee acquires corresponding rights
30 under the modified or substituted contract. The
31 assignment may provide that the modification or
32 substitution is a breach of contract by the assignor. This
33 subdivision is subject to subdivisions (b) to (d), inclusive.

34 (b) Subdivision (a) applies to the extent that either of
35 the following apply:

36 (1) The right to payment or a part thereof under an
37 assigned contract has not been fully earned by
38 performance.

39 (2) The right to payment or a part thereof has been
40 fully earned by performance and the account debtor has



1 not received notification of the assignment under
2 subdivision (a) of Section 9406.

3 (c) This section is subject to law other than this
4 division which establishes a different rule for an account
5 debtor who is an individual and who incurred the
6 obligation primarily for personal, family, or household
7 purposes.

8 (d) This section does not apply to an assignment of a
9 health care insurance receivable.

10 ~~SEC. 23.—~~

11 *SEC. 28.* Section 9406 of the Commercial Code, as
12 added by Section 35 of Chapter 991 of the Statutes of 1999,
13 is repealed.

14 ~~SEC. 24.—~~

15 *SEC. 29.* Section 9406 of the Commercial Code, as
16 amended by Section 17 of Chapter 1000 of the Statutes of
17 1999, is repealed.

18 ~~SEC. 25.—~~

19 *SEC. 30.* Section 9406 is added to the Commercial
20 Code, to read:

21 9406. (a) Subject to subdivisions (b) to (i), inclusive,
22 an account debtor on an account, chattel paper, or a
23 payment intangible may discharge its obligation by
24 paying the assignor until, but not after, the account
25 debtor receives a notification, authenticated by the
26 assignor or the assignee, that the amount due or to
27 become due has been assigned and that payment is to be
28 made to the assignee. After receipt of the notification, the
29 account debtor may discharge its obligation by paying the
30 assignee and may not discharge the obligation by paying
31 the assignor.

32 (b) Subject to subdivision (h), notification is
33 ineffective under subdivision (a) as follows:

34 (1) If it does not reasonably identify the rights
35 assigned.

36 (2) To the extent that an agreement between an
37 account debtor and a seller of a payment intangible limits
38 the account debtor's duty to pay a person other than the
39 seller and the limitation is effective under law other than
40 this division.



1 (3) At the option of an account debtor, if the
2 notification notifies the account debtor to make less than
3 the full amount of any installment or other periodic
4 payment to the assignee, even if any of the following
5 conditions is satisfied:

6 (A) Only a portion of the account, chattel paper, or
7 payment intangible has been assigned to that assignee.

8 (B) A portion has been assigned to another assignee.

9 (C) The account debtor knows that the assignment to
10 that assignee is limited.

11 (c) Subject to subdivision (h), if requested by the
12 account debtor, an assignee shall seasonably furnish
13 reasonable proof that the assignment has been made.
14 Unless the assignee complies, the account debtor may
15 discharge its obligation by paying the assignor, even if the
16 account debtor has received a notification under
17 subdivision (a).

18 (d) Except as otherwise provided in subdivision (e)
19 and in Sections 9407 and 10303, and subject to subdivision
20 (h), a term in an agreement between an account debtor
21 and an assignor or in a promissory note is ineffective to
22 the extent that it does either of the following:

23 (1) Prohibits, restricts, or requires the consent of the
24 account debtor or person obligated on the promissory
25 note to the assignment or transfer of, or the creation,
26 attachment, perfection, or enforcement of a security
27 interest in, the account, chattel paper, payment
28 intangible, or promissory note.

29 (2) Provides that the assignment, ~~transfer~~, or *transfer*
30 *or the* creation, attachment, perfection, or enforcement
31 of the security interest may give rise to a default, breach,
32 right of recoupment, claim, defense, termination, right of
33 termination, or remedy under the account, chattel paper,
34 payment intangible, or promissory note.

35 (e) Subdivision (d) does not apply to the sale of a
36 payment intangible or promissory note.

37 (f) Except as otherwise provided in Sections 9407 and
38 10303, and subject to subdivisions (h) and (i), a rule of
39 law, statute, or regulation, that prohibits, restricts, or
40 requires the consent of a government, governmental



1 body or official, or account debtor to the assignment or
2 transfer of, or creation of a security interest in, an account
3 or chattel paper is ineffective to the extent that the rule
4 of law, statute, or regulation does either of the following:

5 (1) Prohibits, restricts, or requires the consent of the
6 government, governmental body or official, or account
7 debtor to the assignment or transfer of, or the creation,
8 attachment, perfection, or enforcement of a security
9 interest in, the account or chattel paper.

10 (2) Provides that the assignment, ~~transfer,~~ or *transfer*
11 *or the* creation, attachment, perfection, or enforcement
12 of the security interest may give rise to a default, breach,
13 right of recoupment, claim, defense, termination, right of
14 termination, or remedy under the account or chattel
15 paper.

16 (g) Subject to subdivision (h), an account debtor may
17 not waive or vary its option under paragraph (3) of
18 subdivision (b).

19 (h) This section is subject to law other than this
20 division which establishes a different rule for an account
21 debtor who is an individual and who incurred the
22 obligation primarily for personal, family, or household
23 purposes.

24 (i) This section does not apply to an assignment of a
25 health care insurance receivable.

26 (j) *Subdivision (f) does not apply to an assignment or*
27 *transfer of, or the creation, attachment, perfection, or*
28 *enforcement of a security interest in, a claim or right to*
29 *receive compensation for injuries or sickness as described*
30 *in paragraph (1) or (2) of subdivision (a) of Section 104*
31 *of Title 26 of the United States Code, as amended, or a*
32 *claim or right to receive benefits under a special needs*
33 *trust as described in paragraph (4) of subdivision (d) of*
34 *Section 1396p of Title 42 of the United States Code, as*
35 *amended, to the extent that subdivision (f) is inconsistent*
36 *with those laws.*

37 ~~SEC. 26.—~~

38 *SEC. 31.* Section 9407 of the Commercial Code, as
39 added by Section 35 of Chapter 991 of the Statutes of 1999,
40 is amended to read:



1 9407. (a) Except as otherwise provided in
2 subdivision (b), a term in a lease agreement is ineffective
3 to the extent that it does either of the following:

4 (1) Prohibits, restricts, or requires the consent of a
5 party to the lease to the assignment or transfer of, or the
6 creation, attachment, perfection, or enforcement of a
7 security interest in, an interest of a party under the lease
8 contract or in the lessor's residual interest in the goods.

9 (2) Provides that the assignment, ~~transfer,~~ or *transfer*
10 *or the* creation, attachment, perfection, or enforcement
11 of the security interest may give rise to a default, breach,
12 right of recoupment, claim, defense, termination, right of
13 termination, or remedy under the lease.

14 (b) Except as otherwise provided in subdivision (g) of
15 Section 10303, a term described in paragraph (2) of
16 subdivision (a) is effective to the extent that there is
17 either of the following:

18 (1) A transfer by the lessee of the lessee's right of
19 possession or use of the goods in violation of the term.

20 (2) A delegation of a material performance of either
21 party to the lease contract in violation of the term.

22 (c) The creation, attachment, perfection, or
23 enforcement of a security interest in the lessor's interest
24 under the lease contract or the lessor's residual interest
25 in the goods is not a transfer that materially impairs the
26 lessee's prospect of obtaining return performance or
27 materially changes the duty of or materially increases the
28 burden or risk imposed on the lessee within the purview
29 of subdivision (d) of Section 10303 unless, and then only
30 to the extent that, enforcement actually results in a
31 delegation of material performance of the lessor.

32 ~~SEC. 27.—~~

33 *SEC. 32.* Section 9408 of the Commercial Code, as
34 added by Section 35 of Chapter 991 of the Statutes of 1999,
35 is amended to read:

36 9408. (a) Except as otherwise provided in
37 subdivision (b), a term in a promissory note or in an
38 agreement between an account debtor and a debtor
39 which relates to a health care insurance receivable or a
40 general intangible, including a contract, permit, license,



1 or franchise, and which term prohibits, restricts, or
2 requires the consent of the person obligated on the
3 promissory note or the account debtor to, the assignment
4 or transfer of, or the creation, attachment, or perfection
5 of a security interest in, the promissory note, health care
6 insurance receivable, or general intangible, is ineffective
7 to the extent that the term does, or would do, either of the
8 following:

9 (1) It would impair the creation, attachment, or
10 perfection of a security interest.

11 (2) It provides that the assignment,~~—transfer,~~ *or*
12 *transfer or the* creation, attachment, or perfection of the
13 security interest may give rise to a default, breach, right
14 of recoupment, claim, defense, termination, right of
15 termination, or remedy under the promissory note,
16 health care insurance receivable, or general intangible.

17 (b) Subdivision (a) applies to a security interest in a
18 payment intangible or promissory note only if the
19 security interest arises out of a sale of the payment
20 intangible or promissory note.

21 (c) A rule of law, statute, or regulation, that prohibits,
22 restricts, or requires the consent of a government,
23 governmental body or official, person obligated on a
24 promissory note, or account debtor to the assignment or
25 transfer of, or the creation of a security interest in, a
26 promissory note, health care insurance receivable, or
27 general intangible, including a contract, permit, license,
28 or franchise between an account debtor and a debtor, is
29 ineffective to the extent that the rule of law, statute, or
30 regulation does, or would do, either of the following:

31 (1) It would impair the creation, attachment, or
32 perfection of a security interest.

33 (2) It provides that the assignment,~~—transfer,~~ *or*
34 *transfer or the* creation, attachment, or perfection of the
35 security interest may give rise to a default, breach, right
36 of recoupment, claim, defense, termination, right of
37 termination, or remedy under the promissory note,
38 health care insurance receivable, or general intangible.

39 (d) To the extent that a term in a promissory note or
40 in an agreement between an account debtor and a debtor



1 which relates to a health care insurance receivable or
2 general intangible or a rule of law, statute, or regulation
3 described in subdivision (c) would be effective under law
4 other than this division but is ineffective under
5 subdivision (a) or (c), all of the following rules apply with
6 respect to the creation, attachment, or perfection of a
7 security interest in the promissory note, health care
8 insurance receivable, or general intangible:

9 (1) It is not enforceable against the person obligated
10 on the promissory note or the account debtor.

11 (2) It does not impose a duty or obligation on the
12 person obligated on the promissory note or the account
13 debtor.

14 (3) It does not require the person obligated on the
15 promissory note or the account debtor to recognize the
16 security interest, pay or render performance to the
17 secured party, or accept payment or performance from
18 the secured party.

19 (4) It does not entitle the secured party to use or assign
20 the debtor's rights under the promissory note, health care
21 insurance receivable, or general intangible, including any
22 related information or materials furnished to the debtor
23 in the transaction giving rise to the promissory note,
24 health care insurance receivable, or general intangible.

25 (5) It does not entitle the secured party to use, assign,
26 possess, or have access to any trade secrets or confidential
27 information of the person obligated on the promissory
28 note or the account debtor.

29 (6) It does not entitle the secured party to enforce the
30 security interest in the promissory note, health care
31 insurance receivable, or general intangible.

32 *(e) Subdivision (c) does not apply to an assignment or*
33 *transfer of, or the creation, attachment, perfection, or*
34 *enforcement of a security interest in, a claim or right to*
35 *receive compensation for injuries or sickness as described*
36 *in paragraph (1) or (2) of subdivision (a) of Section 104*
37 *of Title 26 of the United States Code, as amended, or a*
38 *claim or right to receive benefits under a special needs*
39 *trust as described in paragraph (4) of subdivision (d) of*
40 *Section 1396p of Title 42 of the United States Code, as*



1 *amended, to the extent that subdivision (c) is*
2 *inconsistent with those laws.*

3 ~~SEC. 28.—~~

4 *SEC. 33.* Section 9409 of the Commercial Code, as
5 added by Section 35 of Chapter 991 of the Statutes of 1999,
6 is repealed.

7 ~~SEC. 29.—~~

8 *SEC. 34.* Section 9409 of the Commercial Code, as
9 amended by Section 18 of Chapter 1000 of the Statutes of
10 1999, is repealed.

11 ~~SEC. 30.—~~

12 *SEC. 35.* Section 9409 is added to the Commercial
13 Code, to read:

14 9409. (a) A term in a letter of credit or a rule of law,
15 statute, regulation, custom, or practice applicable to the
16 letter of credit which prohibits, restricts, or requires the
17 consent of an applicant, issuer, or nominated person to a
18 beneficiary's assignment of or creation of a security
19 interest in a letter-of-credit right is ineffective to the
20 extent that the term or rule of law, statute, regulation,
21 custom, or practice does, or would do, either of the
22 following:

23 (1) It would impair the creation, attachment, or
24 perfection of a security interest in the letter-of-credit
25 right.

26 (2) It provides that the assignment, *or the* creation,
27 attachment, or perfection of the security interest may
28 give rise to a default, breach, right of recoupment, claim,
29 defense, termination, right of termination, or remedy
30 under the letter-of-credit right.

31 (b) To the extent that a term in a letter of credit is
32 ineffective under subdivision (a) but would be effective
33 under law other than this division or a custom or practice
34 applicable to the letter of credit, to the transfer of a right
35 to draw or otherwise demand performance under the
36 letter of credit, or to the assignment of a right to proceeds
37 of the letter of credit, all of the following rules apply with
38 respect to the creation, attachment, or perfection of a
39 security interest in the letter-of-credit right:



1 (1) It is not enforceable against the applicant, issuer,
2 nominated person, or transferee beneficiary.

3 (2) It imposes no duties or obligations on the applicant,
4 issuer, nominated person, or transferee beneficiary.

5 (3) It does not require the applicant, issuer, nominated
6 person, or transferee beneficiary to recognize the
7 security interest, pay or render performance to the
8 secured party, or accept payment or other performance
9 from the secured party.

10 ~~SEC. 31.—~~

11 *SEC. 36.* Section 9502 of the Commercial Code, as
12 added by Section 35 of Chapter 991 of the Statutes of 1999,
13 is amended to read:

14 9502. (a) Subject to subdivision (b), a financing
15 statement is sufficient only if it satisfies all of the following
16 conditions:

17 (1) It provides the name of the debtor.

18 (2) It provides the name of the secured party or a
19 representative of the secured party.

20 (3) It indicates the collateral covered by the financing
21 statement.

22 (b) Except as otherwise provided in subdivision (b) of
23 Section 9501, to be sufficient, a financing statement that
24 covers as-extracted collateral or timber to be cut, or
25 which is filed as a fixture filing and covers goods that are
26 or are to become fixtures, must satisfy subdivision (a) and
27 also satisfy all of the following conditions:

28 (1) Indicate that it covers this type of collateral.

29 (2) Indicate that it is to be recorded in the real
30 property records.

31 (3) Provide a description of the real property to which
32 the collateral is related sufficient to give constructive
33 notice of a mortgage under the law of this state if the
34 description were contained in a record of the mortgage
35 of the real property.

36 (4) If the debtor does not have an interest of record in
37 the real property, provide the name of a record owner.

38 (c) A record of a mortgage is effective, from the date
39 of recording, as a financing statement filed as a fixture
40 filing or as a financing statement covering as-extracted



1 collateral or timber to be cut only if all of the following
2 conditions are satisfied:

3 (1) The record indicates the goods or accounts that it
4 covers.

5 (2) The goods are or are to become fixtures related to
6 the real property described in the record or the collateral
7 is related to the real property described in the record and
8 is as-extracted collateral or timber to be cut.

9 (3) The record satisfies the requirements for a
10 financing statement in this section other than an
11 indication that it is to be filed in the real property records.

12 (4) The record is duly recorded.

13 (d) A financing statement may be filed before a
14 security agreement is made or a security interest
15 otherwise attaches.

16 ~~SEC. 32.—~~

17 *SEC. 37.* Section 9505 of the Commercial Code, as
18 added by Section 35 of Chapter 991 of the Statutes of 1999,
19 is amended to read:

20 9505. (a) A consignor, lessor, or other bailor of goods,
21 a licensor, or a buyer of a payment intangible or
22 promissory note may file a financing statement, or may
23 comply with a statute or treaty described in subdivision
24 (a) of Section 9311, using the terms “consignor,”
25 “consignee,” “lessor,” “lessee,” “bailor,” “bailee,”
26 “licensor,” “licensee,” “owner,” “registered owner,”
27 “buyer,” “seller,” or words of similar import, instead of
28 the terms “secured party” and “debtor.”

29 (b) This chapter applies to the filing of a financing
30 statement under subdivision (a) and, as appropriate, to
31 compliance that is equivalent to filing a financing
32 statement under subdivision (b) of Section 9311, but the
33 filing or compliance is not of itself a factor in determining
34 whether the collateral secures an obligation. If it is
35 determined for another reason that the collateral secures
36 an obligation, a security interest held by the consignor,
37 lessor, bailor, licensor, owner, or buyer which attaches to
38 the collateral is perfected by the filing or compliance.

39 ~~SEC. 33.—~~



1 SEC. 38. Section 9509 of the Commercial Code is
2 amended to read:

3 9509. (a) A person may file an initial financing
4 statement, an amendment that adds collateral covered by
5 a financing statement, or an amendment that adds a
6 debtor to a financing statement only if either of the
7 following conditions is satisfied:

8 (1) The debtor authorizes the filing in an
9 authenticated record or pursuant to subdivision (b) or
10 (c).

11 (2) The person holds an agricultural lien that has
12 become effective at the time of filing and the financing
13 statement covers only collateral in which the person holds
14 an agricultural lien.

15 (b) By authenticating or becoming bound as debtor by
16 a security agreement, a debtor or new debtor authorizes
17 the filing of an initial financing statement, and an
18 amendment, covering both of the following:

19 (1) The collateral described in the security
20 agreement.

21 (2) Property that becomes collateral under paragraph
22 (2) of subdivision (a) of Section 9315, whether or not the
23 security agreement expressly covers proceeds.

24 (c) By acquiring collateral in which a security interest
25 or agricultural lien continues under paragraph (1) of
26 subdivision (a) of Section 9315, a debtor authorizes the
27 filing of an initial financing statement, and an
28 amendment, covering the collateral and property that
29 becomes collateral under paragraph (2) of subdivision
30 (a) of Section 9315.

31 (d) A person may file an amendment other than an
32 amendment that adds collateral covered by a financing
33 statement or an amendment that adds a debtor to a
34 financing statement only if either of the following
35 conditions is satisfied:

36 (1) The secured party of record authorizes the filing.

37 (2) The amendment is a termination statement for a
38 financing statement as to which the secured party of
39 record has failed to file or send a termination statement
40 as required by subdivision (a) or (c) of Section 9513, the



1 debtor authorizes the filing, and the termination
2 statement indicates that the debtor authorized it to be
3 filed.

4 (e) If there is more than one secured party of record
5 for a financing statement, each secured party of record
6 may authorize the filing of an amendment under
7 subdivision (d).

8 ~~SEC. 34.~~

9 *SEC. 39.* Section 9513 of the Commercial Code is
10 amended to read:

11 9513. (a) A secured party shall cause the secured
12 party of record for a financing statement to file a
13 termination statement for the financing statement if the
14 financing statement covers consumer goods and either of
15 the following conditions is satisfied:

16 (1) There is no obligation secured by the collateral
17 covered by the financing statement and no commitment
18 to make an advance, incur an obligation, or otherwise
19 give value.

20 (2) The debtor did not authorize the filing of the initial
21 financing statement.

22 (b) To comply with subdivision (a), a secured party
23 shall cause the secured party of record to file the
24 termination statement in accordance with either of the
25 following rules:

26 (1) Within one month after there is no obligation
27 secured by the collateral covered by the financing
28 statement and no commitment to make an advance, incur
29 an obligation, or otherwise give value.

30 (2) If earlier, within 20 days after the secured party
31 receives an authenticated demand from a debtor.

32 (c) In cases not governed by subdivision (a), within 20
33 days after a secured party receives an authenticated
34 demand from a debtor, the secured party shall cause the
35 secured party of record for a financing statement to send
36 to the debtor a termination statement for the financing
37 statement or file the termination statement in the filing
38 office if any of the following conditions is satisfied:

39 (1) Except in the case of a financing statement
40 covering accounts or chattel paper that has been sold or



1 goods that are the subject of a consignment, there is no
2 obligation secured by the collateral covered by the
3 financing statement and no commitment to make an
4 advance, incur an obligation, or otherwise give value.

5 (2) The financing statement covers accounts or
6 chattel paper that has been sold but as to which the
7 account debtor or other person obligated has discharged
8 its obligation.

9 (3) The financing statement covers goods that were
10 the subject of a consignment to the debtor but are not in
11 the debtor's possession.

12 (4) The debtor did not authorize the filing of the initial
13 financing statement.

14 (d) Except as otherwise provided in Section 9510,
15 upon the filing of a termination statement with the filing
16 office, the financing statement to which the termination
17 statement relates ceases to be effective. Except as
18 otherwise provided in Section 9510, for purposes of
19 subdivision (g) of Section 9519, subdivision (a) of Section
20 9522, and subdivision (c) of Section 9523, the filing with
21 the filing office of a termination statement relating to a
22 financing statement that indicates that the debtor is a
23 transmitting utility also causes the effectiveness of the
24 financing statement to lapse.

25 ~~SEC. 35.—~~

26 *SEC. 40.* Section 9519 of the Commercial Code is
27 amended to read:

28 9519. (a) For each record filed in a filing office, the
29 filing office shall do all of the following:

30 (1) Assign a unique number to the filed record.

31 (2) Create a record that bears the number assigned to
32 the filed record and the date and time of filing.

33 (3) Maintain the filed record for public inspection.

34 (4) Index the filed record in accordance with
35 subdivisions (c), (d), and (e).

36 (b) Except as otherwise provided in subdivision (i), a
37 file number assigned after January 1, 2002, must include
38 a digit that:

39 (1) Is mathematically derived from or related to the
40 other digits of the file number.



1 (2) Aids the filing office in determining whether a
2 number communicated as the file number includes a
3 single-digit or transpositional error.

4 (c) Except as otherwise provided in subdivisions (d)
5 and (e), the filing office shall do both of the following:

6 (1) Index an initial financing statement according to
7 the name of the debtor and index all filed records relating
8 to the initial financing statement in a manner that
9 associates with one another an initial financing statement
10 and all filed records relating to the initial financing
11 statement.

12 (2) Index a record that provides a name of a debtor
13 which was not previously provided in the financing
14 statement to which the record relates also according to
15 the name that was not previously provided.

16 (d) If a financing statement is filed as a fixture filing or
17 covers as-extracted collateral or timber to be cut, it must
18 be recorded and the filing office shall index it in
19 accordance with both of the following rules:

20 (1) Under the names of the debtor and of each owner
21 of record shown on the financing statement as if they
22 were the mortgagors under a mortgage of the real
23 property described.

24 (2) To the extent that the law of this state provides for
25 indexing of records of mortgages under the name of the
26 mortgagee, under the name of the secured party as if the
27 secured party were the mortgagee thereunder, or, if
28 indexing is by description, as if the financing statement
29 were a record of a mortgage of the real property
30 described.

31 (e) If a financing statement is filed as a fixture filing or
32 covers as-extracted collateral or timber to be cut, the
33 filing office shall index an assignment filed under
34 subdivision (a) of Section 9514 or an amendment filed
35 under subdivision (b) of Section 9514 in accordance with
36 both of the following rules:

37 (1) Under the name of the assignor as grantor.

38 (2) To the extent that the law of this state provides for
39 indexing a record of the assignment of a mortgage under
40 the name of the assignee, under the name of the assignee.



1 (f) The filing office shall maintain a capability to do
2 both of the following:

3 (1) Retrieve a record by the name of the debtor and
4 by either of the following:

5 (A) If the filing office is described in paragraph (1) of
6 subdivision (a) of Section 9501, by the file number
7 assigned to the initial financing statement to which the
8 record relates and the date that the record was filed or
9 recorded.

10 (B) If the filing office is described in paragraph (2) of
11 subdivision (a) of Section 9501, by the file number
12 assigned to the initial financing statement to which the
13 record relates.

14 (2) Associate and retrieve with one another an initial
15 financing statement and each filed record relating to the
16 initial financing statement.

17 (g) The filing office may not remove a debtor's name
18 from the index until one year after the effectiveness of a
19 financing statement naming the debtor lapses under
20 Section 9515 with respect to all secured parties of record.

21 (h) Except as otherwise provided in subdivision (i),
22 the filing office shall perform the acts required by
23 subdivisions (a) to (e), inclusive, at the time and in the
24 manner prescribed by filing-office rule, but not later than
25 two business days after the filing office receives the
26 record in question.

27 (i) Subdivisions (b) and (h) do not apply to a filing
28 office described in paragraph (1) of subdivision (a) of
29 Section 9501.

30 ~~SEC. 36.—~~

31 *SEC. 41.* Section 9524 of the Commercial Code is
32 amended to read:

33 9524. Delay by the filing office beyond a time limit
34 prescribed by this chapter is excused if both of the
35 following conditions are satisfied:

36 (1) The delay is caused by interruption of
37 communication or computer facilities, war, emergency
38 conditions, failure of equipment, or other circumstances
39 beyond control of the filing office.



1 (2) The filing office exercises reasonable diligence
2 under the circumstances.

3 ~~SEC. 37.—~~

4 *SEC. 42. Section 9525 of the Commercial Code is*
5 *amended to read:*

6 9525. (a) Except as otherwise provided in
7 subdivision (d), the fee for filing and indexing a record
8 under this chapter, ~~other than an initial financing~~
9 ~~statement of the kind described in subdivision (c) of~~
10 ~~Section 9502, is as follows:~~

11 ~~(1) Ten dollars (\$10) if the record is communicated in~~
12 ~~writing and consists of one or two pages.~~

13 ~~(2) Twenty dollars (\$20) if the record is~~
14 ~~communicated in writing and consists of more than two~~
15 ~~pages.~~

16 ~~(3) Five dollars (\$5) if the record is communicated by~~
17 ~~another medium authorized by a rule adopted by the~~
18 ~~filing office is set forth in subdivisions (a), (b), and (c) of~~
19 ~~Section 12194 of the Government Code.~~

20 (b) The number of names required to be indexed does
21 not affect the amount of the fee in subdivision (a).

22 (c) The fee for responding to a request for information
23 from the filing office, including for issuing a certificate
24 showing whether there is on file any financing statement
25 naming a particular debtor, is as follows:

26 (1) Ten dollars (\$10) if the request is communicated
27 in writing.

28 (2) Five dollars (\$5) if the request is communicated by
29 another medium authorized by a rule adopted by the
30 filing office.

31 (d) This section does not require a fee with respect to
32 a record of a mortgage which is effective as a financing
33 statement filed as a fixture filing or as a financing
34 statement covering as-extracted collateral or timber to be
35 cut under subdivision (c) of Section 9502. However, the
36 recording and satisfaction fees that otherwise would be
37 applicable to the record of the mortgage apply.

38 *SEC. 43. Section 9608 of the Commercial Code is*
39 *amended to read:*



1 9608. (a) If a security interest or agricultural lien
2 secures payment or performance of an obligation, the
3 following rules apply:

4 (1) A secured party shall apply or pay over for
5 application the cash proceeds of collection or
6 enforcement under Section 9607 in the following order to:

7 (A) The reasonable expenses of collection and
8 enforcement and, to the extent provided for by
9 agreement and not prohibited by law, reasonable
10 attorney's fees and legal expenses incurred by the
11 secured party.

12 (B) The satisfaction of obligations secured by the
13 security interest or agricultural lien under which the
14 collection or enforcement is made.

15 (C) The satisfaction of obligations secured by any
16 subordinate security interest in or other lien on the
17 collateral subject to the security interest or agricultural
18 lien under which the collection or enforcement is made
19 if the secured party receives an authenticated demand
20 for proceeds before distribution of the proceeds is
21 completed.

22 (2) If requested by a secured party, a holder of a
23 subordinate security interest or other lien shall furnish
24 reasonable proof of the interest or lien within a
25 reasonable time. Unless the holder complies, the secured
26 party need not comply with the holder's demand under
27 subparagraph (C) of paragraph (1).

28 (3) A secured party need not apply or pay over for
29 application noncash proceeds of collection and
30 enforcement under Section 9607 unless the failure to do
31 so would be commercially unreasonable. A secured party
32 that applies or pays over for application noncash proceeds
33 shall do so in a commercially reasonable manner.

34 (4) A secured party shall account to and pay a debtor
35 for any surplus, and except as otherwise provided in
36 subdivision (b) of Section 9626, the obligor is liable for any
37 deficiency.

38 (b) If the underlying transaction is a sale of accounts,
39 chattel paper, payment intangibles, or promissory notes,
40 the debtor is not entitled to any surplus, and the obligor



1 is not liable for any deficiency. Subdivision (b) of Section
2 701.040 of the Code of Civil Procedure relating to the
3 payment of proceeds applies only if the security
4 agreement provides that the debtor is entitled to any
5 surplus.

6 ~~SEC. 38.—~~

7 *SEC. 44.* Section 9611 of the Commercial Code is
8 amended to read:

9 9611. (a) In this section, “notification date” means
10 the earlier of the date on which:

11 (1) A secured party sends to the debtor and any
12 secondary obligor an authenticated notification of
13 disposition.

14 (2) The debtor and any secondary obligor waive the
15 right to notification.

16 (b) Except as otherwise provided in subdivision (d), a
17 secured party that disposes of collateral under Section
18 9610 shall send to the persons specified in subdivision (c)
19 a reasonable authenticated notification of disposition.

20 (c) To comply with subdivision (b), the secured party
21 shall send an authenticated notification of disposition to
22 all of the following persons:

23 (1) The debtor.

24 (2) Any secondary obligor.

25 (3) If the collateral is other than consumer goods to
26 both of the following persons:

27 (A) Any other person from which the secured party
28 has received, before the notification date, an
29 authenticated notification of a claim of an interest in the
30 collateral.

31 (B) Any other secured party or lienholder that, 10 days
32 before the notification date, held a security interest in or
33 other lien on the collateral perfected by the filing of a
34 financing statement with respect to which all of the
35 following apply:

36 (i) It identified the collateral.

37 (ii) It was indexed under the debtor’s name as of that
38 date.



1 (iii) It was filed in the office in which to file a financing
2 statement against the debtor covering the collateral as of
3 that date.

4 (C) Any other secured party that, 10 days before the
5 notification date, held a security interest in the collateral
6 perfected by compliance with a statute, regulation, or
7 treaty described in subdivision (a) of Section 9311.

8 (d) Subdivision (b) does not apply if the collateral is
9 perishable or threatens to decline speedily in value or is
10 of a type customarily sold on a recognized market.

11 (e) A secured party complies with the requirement for
12 notification prescribed in subparagraph (B) of paragraph
13 (3) of subsection (c) if it satisfies both of the following
14 conditions:

15 (1) Not later than 20 days or earlier than 30 days before
16 the notification date, the secured party requests, in a
17 commercially reasonable manner, information
18 concerning financing statements indexed under the
19 debtor's name in the office indicated in subparagraph (B)
20 of paragraph (3) of subdivision (c).

21 (2) Before the notification date, the secured party
22 either:

23 (A) Did not receive a response to the request for
24 information.

25 (B) Received a response to the request for information
26 and sent an authenticated notification of disposition to
27 each secured party or other lienholder named in that
28 response whose financing statement covered the
29 collateral.

30 ~~SEC. 39.—~~

31 *SEC. 45.* Section 9613 of the Commercial Code is
32 amended to read:

33 9613. Except in a consumer-goods transaction, the
34 following rules apply:

35 (1) The contents of a notification of disposition are
36 sufficient if the notification does all of the following:

37 (A) It describes the debtor and the secured party.

38 (B) It describes the collateral that is the subject of the
39 intended disposition.

40 (C) It states the method of intended disposition.



1 (D) It states that the debtor is entitled to an
2 accounting of the unpaid indebtedness and states the
3 charge, if any, for an accounting.

4 (E) It states the time and place of a public disposition
5 or the time after which any other disposition is to be
6 made.

7 (2) Whether the contents of a notification that lacks
8 any of the information specified in paragraph (1) are
9 nevertheless sufficient is a question of fact.

10 (3) The contents of a notification providing
11 substantially the information specified in paragraph (1)
12 are sufficient, even if the notification includes either of
13 the following:

14 (A) Information not specified by that paragraph.

15 (B) Minor errors that are not seriously misleading.

16 (4) A particular phrasing of the notification is not
17 required.

18 (5) The following form of notification and the form
19 appearing in subdivision (3) of Section 9614, when
20 completed, each provides sufficient information:

21
22 NOTIFICATION OF DISPOSITION OF COLLATERAL

23
24 To: _____

25 [Name of debtor, obligor, or other person to which the
26 notification is sent]

27
28 From: _____

29 [Name, address, and telephone number of
30 secured party]

31
32 Name of Debtor(s): _____

33 [Include only if debtor(s) are not an addressee]

34 [For a public disposition:]

35 We will sell [or lease or license, as applicable]

36 the _____ [to the highest qualified bidder in public

37 [describe collateral]

38 as follows:]

39



1 Day and Date: _____

2

3 Time: _____

4

5 Place: _____

6

7 [For a private disposition:]

8 We will sell [or license, as applicable] the _____

9

(describe collateral)

10 privately sometime after _____.

11

[day and date]

12 You are entitled to an accounting of the unpaid indebtedness

13 secured by the property that we intend to sell [or lease or

14 license, as applicable] [for a charge of \$_____]. You may request

15 an accounting by calling us at _____.

16

[telephone number]

17

~~SEC. 40.~~

18

19 *SEC. 46.* Section 9615 of the Commercial Code is

20

amended to read:

21

9615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9610 in the following order to each of the following:

22

23

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

24

25

26

27

28

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

29

30

31

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral 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 both of the following conditions are satisfied:

32

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36

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds or notice of the levy

37

38

39

40



1 of attachment or execution before distribution of the
2 proceeds is completed.

3 (B) In a case in which a consignor has an interest in the
4 collateral, the subordinate security interest or other lien
5 is senior to the interest of the consignor.

6 (4) A secured party that is a consignor of the collateral
7 if the secured party receives from the consignor an
8 authenticated demand for proceeds before distribution of
9 the proceeds is completed.

10 (b) If requested by a secured party, a holder of a
11 subordinate security interest or other lien shall furnish
12 reasonable proof of the interest or lien within a
13 reasonable time. Unless the holder does so, the secured
14 party need not comply with the holder's demand under
15 paragraph (3) of subdivision (a).

16 (c) A secured party need not apply or pay over for
17 application noncash proceeds of disposition under
18 Section 9610 unless the failure to do so would be
19 commercially unreasonable. A secured party that applies
20 or pays over for application noncash proceeds shall do so
21 in a commercially reasonable manner.

22 (d) If the security interest under which a disposition
23 is made secures payment or performance of an obligation,
24 after making the payments and applications required by
25 subdivision (a) and permitted by subdivision (c), both of
26 the following apply:

27 (1) Unless paragraph (4) of subdivision (a) requires
28 the secured party to apply or pay over cash proceeds to
29 a consignor, the secured party shall account to and pay a
30 debtor for any surplus except as provided in Section
31 701.040 of the Code of Civil Procedure.

32 (2) Subject to subdivision (b) of Section 9626, the
33 obligor is liable for any deficiency.

34 (e) (1) If the underlying transaction is a sale of
35 accounts, chattel paper, payment intangibles, or
36 promissory notes, both of the following apply:

37 (A) The debtor is not entitled to any surplus.

38 (B) The obligor is not liable for any deficiency.

39 (2) Subdivision (b) of Section 701.040 of the Code of
40 Civil Procedure relating to the payment of proceeds and



1 the liability of the secured party applies only if the
2 security agreement provides that the debtor is entitled to
3 any surplus.

4 (f) The surplus or deficiency following a disposition is
5 calculated based on the amount of proceeds that would
6 have been realized in a disposition complying with this
7 chapter to a transferee other than the secured party, a
8 person related to the secured party, or a secondary
9 obligor if both of the following apply:

10 (1) The transferee in the disposition is the secured
11 party, a person related to the secured party, or a
12 secondary obligor.

13 (2) The amount of proceeds of the disposition is
14 significantly below the range of proceeds that a
15 complying disposition to a person other than the secured
16 party, a person related to the secured party, or a
17 secondary obligor would have brought.

18 (g) The following rules apply with respect to a secured
19 party that receives cash proceeds of a disposition in good
20 faith and without knowledge that the receipt violates the
21 rights of the holder of a security interest or other lien that
22 is not subordinate to the security interest or agricultural
23 lien under which the disposition is made:

24 (1) The secured party takes the cash proceeds free of
25 the security interest or other lien.

26 (2) The secured party is not obligated to apply the
27 proceeds of the disposition to the satisfaction of
28 obligations secured by the security interest or other lien.

29 (3) The secured party is not obligated to account to or
30 pay the holder of the security interest or other lien for any
31 surplus.

32 ~~SEC. 41.—~~

33 *SEC. 47.* Section 9625 of the Commercial Code is
34 amended to read:

35 9625. (a) If it is established that a secured party is not
36 proceeding in accordance with this division, a court may
37 order or restrain collection, enforcement, or disposition
38 of collateral on appropriate terms and conditions.

39 (b) Subject to subdivisions (c), (d), and (f), a person
40 is liable for damages in the amount of any loss caused by



1 a failure to comply with this division. Loss caused by a
2 failure to comply may include loss resulting from the
3 debtor's inability to obtain, or increased costs of,
4 alternative financing.

5 (c) Except as otherwise provided in Section 9628, a
6 person that, at the time of the failure, was a debtor, was
7 an obligor, or held a security interest in or other lien on
8 the collateral may recover damages under subdivision
9 (b) for its loss.

10 (d) A debtor whose deficiency is eliminated under
11 Section 9626 may recover damages for the loss of any
12 surplus. However, in a transaction other than a consumer
13 transaction, a debtor or secondary obligor whose
14 deficiency is eliminated or reduced under Section 9626
15 may not otherwise recover under subdivision (b) for
16 noncompliance with the provisions of this chapter
17 relating to collection, enforcement, disposition, or
18 acceptance.

19 (e) In addition to any damages recoverable under
20 subdivision (b), the debtor, consumer obligor, or person
21 named as a debtor in a filed record, as applicable, may
22 recover five hundred dollars (\$500) in each case from any
23 of the following persons:

- 24 (1) A person that fails to comply with Section 9208.
- 25 (2) A person that fails to comply with Section 9209.
- 26 (3) A person that files a record that the person is not
27 entitled to file under subdivision (a) of Section 9509.
- 28 (4) A person that fails to cause the secured party of
29 record to file or send a termination statement as required
30 by subdivision (a) or (c) of Section 9513.
- 31 (5) A person that fails to comply with paragraph (1) of
32 subdivision (b) of Section 9616 and whose failure is part
33 of a pattern, or consistent with a practice, of
34 noncompliance.
- 35 (6) A person that fails to comply with paragraph (2) of
36 subdivision (b) of Section 9616.

37 (f) A debtor or consumer obligor may recover
38 damages under subdivision (b) and, in addition, five
39 hundred dollars (\$500) in each case from a person that,
40 without reasonable cause, fails to comply with a request



1 under Section 9210. A recipient of a request under Section
2 9210 which never claimed an interest in the collateral or
3 obligations that are the subject of a request under that
4 section has a reasonable excuse for failure to comply with
5 the request within the meaning of this subdivision.

6 (g) If a secured party fails to comply with a request
7 regarding a list of collateral or a statement of account
8 under Section 9210, the secured party may claim a
9 security interest only as shown in the list or statement
10 included in the request as against a person that is
11 reasonably misled by the failure.

12 ~~SEC. 42.—~~

13 *SEC. 48. Section 9626 of the Commercial Code is*
14 *amended to read:*

15 9626. (a) In an action arising from a transaction,
16 other than a consumer transaction, in which the amount
17 of a deficiency or surplus is in issue, the following rules
18 apply:

19 (1) A secured party need not prove compliance with
20 the provisions of this chapter relating to collection,
21 enforcement, disposition, or acceptance unless the
22 debtor or a secondary obligor places the secured party's
23 compliance in issue.

24 (2) If the secured party's compliance is placed in issue,
25 the secured party has the burden of establishing that the
26 collection, enforcement, disposition, or acceptance was
27 conducted in accordance with this chapter.

28 (3) Except as otherwise provided in Section 9628, if a
29 secured party fails to prove that the collection,
30 enforcement, disposition, or acceptance was conducted
31 in accordance with the provisions of this chapter relating
32 to collection, enforcement, disposition, or acceptance,
33 the liability of a debtor or a secondary obligor for a
34 deficiency is limited to an amount by which the sum of the
35 secured obligation, expenses, and attorney's fees exceeds
36 the greater of either of the following:

37 (A) The proceeds of the collection, enforcement,
38 disposition, or acceptance.

39 (B) The amount of proceeds that would have been
40 realized had the noncomplying secured party proceeded



1 in accordance with the provisions of this chapter relating
2 to collection, enforcement, disposition, or acceptance.

3 (4) For purposes of subparagraph (B) of paragraph
4 (3), the amount of proceeds that would have been
5 realized is equal to the sum of the secured obligation,
6 expenses, and attorney's fees unless the secured party
7 proves that the amount is less than that sum.

8 (5) If a deficiency or surplus is calculated under
9 subdivision (f) of Section 9615, the debtor or obligor has
10 the burden of establishing that the amount of proceeds of
11 the disposition is significantly below the range of prices
12 that a complying disposition to a person other than the
13 secured party, a person related to the secured party, or a
14 secondary obligor would have brought.

15 (b) In a consumer transaction, the following rules
16 apply:

17 (1) In an action in which a deficiency or a surplus is an
18 issue:

19 (A) A secured party has the burden of proving
20 compliance with the provisions of this chapter relating to
21 collection, enforcement, disposition, and acceptance
22 whether or not the debtor or a secondary obligor places
23 the secured party's compliance in issue.

24 (B) If a deficiency or surplus is calculated under
25 subdivision (f) of Section 9615, the secured party has the
26 burden of establishing that the amount of proceeds of the
27 disposition is not significantly below the range of prices
28 that a complying disposition to a person other than the
29 secured party, a person related to the secured party, or a
30 secondary obligor would have brought.

31 (2) The debtor or any secondary obligor is liable for
32 any deficiency only if all of the following conditions are
33 met:

34 (A) It is not otherwise agreed or otherwise provided
35 in the Retail Installment Sales Act (Chapter 1
36 commencing with Section 1801), Title 2, Part 4, Division
37 3, Civil Code), and, in particular, Section 1812.5 of the
38 Civil Code or any other statute.



1 (B) The debtor and obligor were given notice, in
2 accordance with Sections 9611, 9612, and 9613, or Section
3 9614, as applicable, of the disposition of the collateral.

4 (C) The collection, enforcement, disposition, and
5 acceptance by the secured party were conducted in good
6 faith and in a commercially reasonable manner.

7 (3) Upon entry of a final judgment that the debtor or
8 obligor is not liable for a deficiency by reason of
9 paragraph (2) or subdivision (f) of Section 9615, the
10 secured party may neither obtain a deficiency judgment
11 nor retain a security interest in any other collateral of the
12 debtor or obligor that secured the indebtedness for which
13 the debtor or obligor is no longer liable.

14 (4) If, subsequent to a disposition that does not satisfy
15 any one or more of the conditions set forth in paragraph
16 (2), or subsequent to a disposition that is subject to
17 subdivision (f) of Section 9615, the secured party disposes
18 pursuant to this section of other collateral securing the
19 same indebtedness, the debtor or obligor may, to the
20 extent he or she is no longer liable for a deficiency
21 judgment by reason of paragraph (2) or subdivision (f)
22 of Section 9615, recover the proceeds realized from the
23 subsequent dispositions, as well as any damages to which
24 the debtor may be entitled if the subsequent disposition
25 is itself noncomplying or otherwise wrongful.

26 (5) Nothing herein shall deprive the debtor of any
27 right to recover damages from the secured party under
28 subdivision ~~(a)~~ (b) of Section 9625, or to offset any such
29 damages against any claim by the secured party for a
30 deficiency, or of any right or remedy to which the debtor
31 may be entitled under any other law. A debtor or obligor
32 in a consumer transaction shall not have any damages
33 owed to it reduced by the amount of any deficiency that
34 would have resulted had the disposition of the collateral
35 by the secured party been conducted in conformity with
36 this division.

37 (6) The secured party shall account to the debtor for
38 any surplus, except as provided in Section 701.040 of the
39 Code of Civil Procedure.



1 *SEC. 49.* Section 9702 of the Commercial Code is
2 amended to read:

3 9702. (a) Except as otherwise provided in this
4 chapter, this division applies to a transaction or lien
5 within its scope, even if the transaction or lien was
6 entered into or created before this division takes effect.

7 (b) Except as otherwise provided in subdivision (c)
8 and in Sections 9703 to 9709, inclusive, both of the
9 following rules apply:

10 (1) Transactions and liens that were not governed by
11 former Division 9, were validly entered into or created
12 before July 1, 2001, and would be subject to this act if they
13 had been entered into or created after July 1, 2001, and
14 the rights, duties, and interests flowing from those
15 transactions and liens remain valid after July 1, 2001.

16 (2) The transactions and liens may be terminated,
17 completed, consummated, and enforced as required or
18 permitted by this division or by the law that otherwise
19 would apply if this division had not taken effect.

20 (c) This division does not affect an action, case, or
21 proceeding commenced before July 1, 2001.

22 ~~SEC. 43.—~~

23 *SEC. 50.* Section 9705 of the Commercial Code is
24 amended to read:

25 9705. (a) If action, other than the filing of a financing
26 statement, is taken before July 1, 2001, and the action
27 would have resulted in priority of a security interest over
28 the rights of a person that becomes a lien creditor had the
29 security interest become enforceable before July 1, 2001,
30 the action is effective to perfect a security interest that
31 attaches under this division on or before July 1, 2002. An
32 attached security interest becomes unperfected on July
33 1, 2002, unless the security interest becomes a perfected
34 security interest under this division before that date.

35 (b) The filing of a financing statement before July 1,
36 2001, is effective to perfect a security interest to the
37 extent the filing would satisfy the applicable
38 requirements for perfection under this division.

39 (c) This division does not render ineffective an
40 effective financing statement that, before July 1, 2001, is



1 filed and satisfies the applicable requirements for
2 perfection under the law of the jurisdiction governing
3 perfection as provided in former Section 9103. However,
4 except as otherwise provided in subdivisions (d) and (e)
5 and in Section 9706, the financing statement ceases to be
6 effective at the earlier of either of the following:

7 (1) The time the financing statement would have
8 ceased to be effective under the law of the jurisdiction in
9 which it is filed.

10 (2) June 30, 2006.

11 (d) The filing of a continuation statement after July 1,
12 2001, does not continue the effectiveness of the financing
13 statement filed before July 1, 2001. However, upon the
14 timely filing of a continuation statement after July 1, 2001,
15 and in accordance with the law of the jurisdiction
16 governing perfection as provided in Chapter 3
17 (commencing with Section 9301), the effectiveness of a
18 financing statement filed in the same office in that
19 jurisdiction before July 1, 2001, continues for the period
20 provided by the law of that jurisdiction.

21 (e) Paragraph (2) of subdivision (c) applies to a
22 financing statement that, before July 1, 2001, is filed
23 against a transmitting utility and satisfies the applicable
24 requirements for perfection under the law of the
25 jurisdiction governing perfection as provided in former
26 Section 9103 only to the extent that Chapter 3
27 (commencing with Section 9301) provides that the law of
28 a jurisdiction other than the jurisdiction in which the
29 financing statement is filed governs perfection of a
30 security interest in collateral covered by the financing
31 statement.

32 (f) A financing statement that includes a financing
33 statement filed before July 1, 2001, and a continuation
34 statement filed after July 1, 2001, is effective only to the
35 extent that it satisfies the requirements of Chapter 5
36 (commencing with Section 9501) for an initial financing
37 statement.

38 ~~SEC. 44.—~~

39 *SEC. 51.* Section 9707 of the Commercial Code is
40 amended and renumbered to read:



1 9708. A person may file an initial financing statement
2 or a continuation statement under this chapter if both of
3 the following conditions are satisfied:

- 4 (1) The secured party of record authorizes the filing.
- 5 (2) The filing is necessary under this chapter to do
6 either of the following:
 - 7 (A) To continue the effectiveness of a financing
8 statement filed before July 1, 2001.
 - 9 (B) To perfect or continue the perfection of a security
10 interest.

11 ~~SEC. 45.~~

12 *SEC. 52.* Section 9707 is added to the Commercial
13 Code, to read:

14 9707. (a) In this section, “pre-effective-date
15 financing statement” means a financing statement filed
16 before the date that this section becomes operative.

17 (b) After the date this section becomes operative, a
18 person may add or delete collateral covered by, continue
19 or terminate the effectiveness of, or otherwise amend the
20 information provided in, a pre-effective-date financing
21 statement only in accordance with the law of the
22 jurisdiction governing perfection as provided in Chapter
23 3 (commencing with Section 9301). However, the
24 effectiveness of a pre-effective-date financing statement
25 also may be terminated in accordance with the law of the
26 jurisdiction in which the financing statement is filed.

27 (c) Except as otherwise provided by subdivision (d),
28 if the law of this state governs perfection of a security
29 interest, the information in a pre-effective-date financing
30 statement may be amended after the date this section
31 becomes operative only if any of the following occur:

32 (1) The pre-effective-date financing statement and an
33 amendment are filed in the office specified in Section
34 9501.

35 (2) An amendment is filed in the office specified in
36 Section 9501 concurrently with, or after the filing in that
37 office of, an initial financing statement that satisfies
38 subdivision (c) of Section 9706.



1 (3) An initial financing statement that provides the
2 information as amended and satisfies subdivision (c) of
3 Section 9706 is filed in the office specified in Section 9501.

4 (d) If the law of this state governs perfection of a
5 security interest, the effectiveness of a pre-effective-date
6 financing statement may be continued only under
7 subdivisions (d) and (f) of Section 9705 or Section 9706.

8 (e) Whether or not the law of this state governs the
9 perfection of a security interest, the effectiveness of a
10 pre-effective-date financing statement filed in this state
11 may be terminated after the date that this section
12 becomes operative by filing a termination statement in
13 the office in which the pre-effective-date financing
14 statement is filed, unless an initial filing statement that
15 satisfies subdivision (c) of Section 9706 has been filed in
16 the office specified by the law of the jurisdiction
17 governing perfection as provided in Chapter 3
18 (commencing with Section 9301) as the office in which to
19 file a financing statement.

20 ~~SEC. 46.—~~

21 *SEC. 53.* Section 9708 of the Commercial Code is
22 amended and renumbered to read:

23 9709. (a) This division determines priority of
24 conflicting claims to collateral. However, if the relative
25 priorities of the claims were established before July 1,
26 2001, former Division 9 (commencing with Section 9101)
27 determines priority.

28 (b) For purposes of subdivision (a) of Section 9322, the
29 priority of a security interest that becomes enforceable
30 under Section 9203 dates from July 1, 2001, if the security
31 interest is perfected under this division by the filing of a
32 financing statement before July 1, 2001, which would not
33 have been effective to perfect the security interest under
34 former Division 9 (commencing with Section 9101). This
35 subdivision does not apply to conflicting security interests
36 each of which is perfected by the filing of such a financing
37 statement.

38 ~~SEC. 47.—~~

39 *SEC. 54.* Section 12183 of the Government Code is
40 amended to read:



1 12183. The Secretary of State shall charge and collect
2 the following fees for certification:

- 3 (a) Certification of a document: Five dollars (\$5).
- 4 (b) Certificate of status or filing: Five dollars (\$5).
- 5 (c) Certificate of information: Ten dollars (\$10) if the
6 request is communicated in writing, and five dollars (\$5)
7 if the request is communicated by another medium
8 authorized by a rule adopted by the office of the
9 Secretary of State.

10 ~~SEC. 48.~~

11 *SEC. 55.* Section 12194 of the Government Code is
12 amended to read:

13 12194. The fees for filing liens pursuant to the Code of
14 Civil Procedure and for filing financing statements and
15 other Uniform Commercial Code filings are the
16 following:

- 17 (a) Ten dollars (\$10) if the record is communicated in
18 writing and consists of one or two pages.
- 19 (b) Twenty dollars (\$20) if the record is a
20 communicated in writing and—~~consist~~ *consists* of more
21 than two pages.
- 22 (c) Five dollars (\$5) if the record is communicated by
23 another medium authorized by a rule adopted by the
24 office of the Secretary of State.
- 25 (d) Two dollars (\$2) if the record is a state tax lien
26 certificate of release.

27 The Secretary of State shall collect a special handling
28 fee for filing records in the manner provided in Section
29 12182.

30 Financing statements and other Uniform Commercial
31 Code filings shall be submitted on national standard forms
32 as approved by the office of the Secretary of State.

33 ~~SEC. 49.~~

34 *SEC. 56.* Section 27291 is added to the Government
35 Code, to read:

36 27291. (a) *Notwithstanding any provision of Chapter*
37 *5 (commencing with Section 9501) of Division 9 of the*
38 *Commercial Code or any other provision of law, a*
39 *financing statement to perfect a security interest or*
40 *agricultural lien may, at the election of the recorder and*



1 *subject to the conditions of subdivision (b), be recorded*
2 *instead of filed.*

3 *(b) A recorder may elect to record a financing*
4 *statement if all of the following apply:*

5 *(1) The recorder employs a system of*
6 *microphotography, optical disk, or other reproduction*
7 *system that does not permit additions, deletions, or other*
8 *changes to the permanent record of the original*
9 *document.*

10 *(2) All film used in the microphotography process*
11 *complies with minimum standards of quality approved by*
12 *the United States Bureau of Standards and the American*
13 *National Standards Institute.*

14 *(3) A true copy of the microfilm, optical disk, or other*
15 *storage medium is kept in a safe and separate place for*
16 *security purposes.*

17 *(c) A certified copy of any record stored or retained on*
18 *microfilm, optical disk, or other reproduction system*
19 *pursuant to this section shall be admissible in any court to*
20 *the same extent as the original record.*

21 *SEC. 57. The provisions of this act, exclusive of*
22 *Sections 14, 17, 20, 23, and 28, 3, 19, 22, 25, 28, and 33 shall*
23 *become operative on July 1, 2001.*

24 *SEC. 58. Section 3 of this act shall become operative*
25 *only if Senate Bill 1899 of the 1999–2000 Regular Session*
26 *is enacted and becomes effective on or before January 1,*
27 *2001.*

28

