

**ACT 155**

**H.B. NO. 617**

A Bill for an Act Relating to the Uniform Commercial Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended in the following particulars:

1. By amending section 490:1-105 to read:

**"Sec. 490:1-105 Territorial application of the chapter; parties' power to choose applicable law.** (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this State.

(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 490:2-402.

Applicability of the Article on Bank Deposits and Collections. Section 490:4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 490:6-102.

Applicability of the Article on Investment Securities. Section 490:8-106.

Perfection provisions of the Article on Secured Transactions. Section 490:9-103."

2. By amending section 490:1-201 to amend the definition of "buyer in ordinary course of business" to read:

"(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt."

3. By amending section 490:1-201(37) to read:

"(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 490:2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 490:2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security."

4. By amending section 490:2-107 to read:

**“Sec. 490:2-107 Goods to be severed from realty: recording.** (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer’s rights under the contract for sale.”

5. By amending section 490:5-116 to read:

**“Sec. 490:5-116 Transfer and assignment.** (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Article 9 on Secured Transactions and is governed by that Article except that

- (a) The assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and
- (b) The issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and
- (c) After what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

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

6. By amending section 490:9-102 to read:

**“Sec. 490:9-102 Policy and subject matter of article.** (1) Except as otherwise provided in section 490:9-104 on excluded transactions, this Article applies

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

(b) To any sale of accounts or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in section 490:9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply."

7. By amending section 490:9-103 to read:

**"Sec. 490:9-103 Perfection of security interests in multiple state transactions.** (1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

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

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

(d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this Article to perfect the security interest,

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

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

thereafter;

- (iii) For the purpose of priority over a buyer of consumer goods (subsection (2) of section 490:9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).
- (2) Certificate of title.
- (a) This subsection applies to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
  - (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from the jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.
  - (c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this State and thereafter covered by a certificate of title issued by this State is subject to the rules stated in paragraph (d) of subsection (1).
  - (d) If goods are brought into this State while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this State and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.
- (3) Accounts, general intangibles and mobile goods.
- (a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).
  - (b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

- (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected instead by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.
  - (d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.
  - (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.
  - (4) Chattel paper. The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.
  - (5) Minerals. Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located."
8. By amending section 490:9-104 to read:
- "Sec. 490:9-104 Transactions excluded from article.** This Article does not apply
- (a) To a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or
  - (b) To a landlord's lien; or
  - (c) To a lien given by statute or other rule of law for services or materials except as provided in section 490:9-310 on priority of such liens; or
  - (d) To a transfer of a claim for wages, salary or other compensation of an

- employee; or
- (e) To a transfer by a government or governmental subdivision or agency; or
- (f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
- (g) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); or
- (h) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- (i) To any right of set-off; or
- (j) Except to the extent that provision is made for fixtures in section 490:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (k) To a transfer in whole or in part of any claim arising out of tort; or

9. By amending section 490:9-105 to read:

**"Sec. 490:9-105 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires:

- (a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;
- (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;
- (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- (e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit;
- (f) "Document" means document of title as defined in the general

definitions of Article 1 (section 490:1-201), and a receipt of the kind described in subsection (2) of section 490:7-201;

- (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) "Filing" means recording;
- (i) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 490:9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;
- (j) "Instrument" means a negotiable instrument (defined in section 490:3-104), or a security (defined in section 490:8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course or business transferred by delivery with any necessary indorsement or assignment;
- (k) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- (l) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event not within his control has relieved or may relieve him from his obligation;
- (m) "Security agreement" means an agreement which creates or provides for a security interest;
- (n) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;
- (o) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.
- (2) Other definitions applying to this Article and the sections in which they appear are:

"Account". Section 490:9-106.

"Attach". Section 490:9-203.

"Construction mortgage". Section 490:9-313 (1) (c).

"Consumer goods". Section 490:9-109 (1).

"Equipment". Section 490:9-109 (2).

"Farm products". Section 490:9-109 (3).

"Fixture". Section 490:9-313.

"Fixture filing". Section 490:9-313.

"General intangibles". Section 490:9-106.



"Inventory". Section 490:9-109 (4).

"Lien creditor". Section 490:9-301 (3).

"Proceeds". Section 490:9-306 (1).

"Purchase money security interest". Section 490:9-107.

"United States". Section 490:9-103.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 490:3-104.

"Contract for sale". Section 490:2-106.

"Holder in due course". Section 490:3-302.

"Note". Section 490:3-104.

"Sale". Section 490:2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article."

10. By amending section 490:9-106 to read:

**"Sec. 490:9-106 Definitions: "Account"; "general intangibles".** "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money."

11. By adding a new section to read:

**"Sec. 490:9-114 Consignment.** (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this Article by paragraph (3) (c) of section 490:2-326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

- (a) The consignor complies with the filing provision of the Article on Sales with respect to consignments (paragraph (3) (c) of section 490:2-326) before the consignee received possession of the goods; and
- (b) The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
- (c) The holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and
- (d) The notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

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

12. By amending section 490:9-203 to read:

**"Sec. 490:9-203 Attachment and enforceability of security interest; proceeds, formal requisites.** (1) Subject to the provisions of section 490:4-208 on the security interest of a collecting bank and section 490:9-113 on a security in-

terest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

- (a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and
- (b) Value has been given; and
- (c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 490:9-306.

(4) A transaction, although subject to this Article, is also subject to chapter 408 (industrial loan act), chapter 409 (small loan act) and chapter 476 (retail installment sales act), and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

13. By amending section 490:9-204 to read:

**"Sec. 490:9-204 After-acquired property; future advances.** (1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (section 490:9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances of value are given pursuant to commitment (subsection (1) of section 490:9-105)."

14. By amending section 490:9-205 to read:

**"Sec. 490:9-205 Use or disposition of collateral without accounting permissible.** A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee."

15. By amending section 490:9-301 to read:

**"Sec. 490:9-301 Persons who take priority over unperfected security in-**

**terests; rights of "lien creditor".** (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) Persons entitled to priority under section 490:9-312;
  - (b) A person who becomes a lien creditor before the security interest is perfected;
  - (c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
  - (d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.
- (2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien."

16. By amending section 490:9-302 to read:

**"Sec. 490:9-302 When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.** (1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in possession of the secured party under section 490:9-305;
- (b) A security interest temporarily perfected in instruments or documents without delivery under section 490:9-304 or in proceeds for a ten-day period under section 490:9-306;
- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 490:9-313;
- (e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the

outstanding accounts of the assignor;

- (f) A security interest of a collecting bank (section 490:4-208) or arising under the Article on Sales (see section 490:9-113) or covered in subsection (3) of this section.
- (g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.
- (h) A security interest in a deposit account. Such a security interest is perfected:
  - (1) As to a deposit account maintained with the secured party, when the security agreement is executed.
  - (2) As to a deposit account maintained with any organization other than the secured party, when notice thereof is given in writing to the organization with whom the deposit account is maintained.
- (2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.
- (3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to
  - (a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or
  - (b) Chapter 286 of this State, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or
  - (c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 490:9-103).
- (4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 490:9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.
- (5) A security interest in a vehicle required to be registered under chapter 286 which is not inventory may be perfected only by registration thereunder.

17. By amending section 490:9-304 to read:

**"Sec. 490:9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute a part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2)

and (3) of section 490:9-306 on proceeds.

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

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

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

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

- (a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of section 490:9-312; or
- (b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article."

18. By amending section 490:9-305 to read:

**"Sec. 490:9-305 When possession by secured party perfects security interest without filing.** A security interest in letters of credit and advices of credit (subsection (2) (a) of section 490:5-116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party."

19. By amending section 490:9-306 to read:

**"Sec. 490:9-306 "Proceeds"; secured party's rights on disposition of collateral.** (1) "Proceeds" include whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is

payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "non-cash proceeds."

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

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

- (a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or
- (b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or
- (c) The security interest in the proceeds is perfected before the expiration of the ten day period.

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

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

- (a) In identifiable non cash proceeds and in separate deposit accounts containing only proceeds;
- (b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
- (c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
- (d) In all cash and deposit accounts of the debtor, in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is
  - (i) Subject to any right of set-off; and
  - (ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

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

- (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
  - (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 490:9-308.
  - (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).
  - (d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods."
20. By amending section 490:9-307 to read:

**"Sec. 490:9-307 Protection of buyers of goods.** (1) A buyer in ordinary course of business (subsection (9) of section 490:1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five day period."

21. By amending section 490:9-308 to read:

**"Sec. 490:9-308 Purchase of chattel paper and instruments.** A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

- (a) Which is perfected under section 490:9-304 (permissive filing and temporary perfection) or under section 490:9-306 (perfection as to proceeds), if he acts without knowledge that the specific paper or instru-

- ment is subject to a security interest; or
- (b) Which is claimed merely as proceeds of inventory subject to a security interest (section 490:9-306) even though he knows that the specific paper or instrument is subject to the security interest.”

22. By amending section 490:9-312 to read:

**“Sec. 490:9-312 Priorities among conflicting security interests in the same collateral.** (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: section 490:4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 490:9-103 on security interests related to other jurisdictions; section 490:9-114 on consignments.

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

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

- (a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of section 490:9-304); and
- (c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

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

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:



- (a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.
- (b) So long as conflicting security interests are unperfected, the first to attach has priority.
- (6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.
- (7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

23. By amending section 490:9-313 to read:

**"Sec. 490:9-313 Priority of security interests in fixtures.** (1) In this section and in the provisions of Part 4 of this Article referring to fixture filing, unless the context otherwise requires

- (a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.
- (b) A "fixture filing" is the filing in accordance with the provisions of section 490:9-401(1) of a financing statement covering goods which are or are to become fixtures and which conforms to the requirements of subsection (5) of section 490:9-402.
- (c) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.
- (2) A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.
- (3) This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.
- (4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where
  - (a) The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate, or is in possession of the real estate; or
  - (b) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priori-

ty over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate, or is in possession of the real estate; or

- (c) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or
- (d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.
- (5) A security interest in fixtures, whether or not perfected has priority over the conflicting interest of an encumbrancer or owner of the real estate where
  - (a) The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or
  - (b) The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.
- (6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.
- (7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.
- (8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation."

24. By amending section 490:9-318 to read:

**"Sec. 490:9-318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.** (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 490:9-206 the rights of an assignee are subject to

- (a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

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

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

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest."

25. By amending section 490:9-402 to read:

**"Sec. 490:9-402 Formal requisites of financing statement; amendments; mortgage as financing statement.** (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 490:9-103, or when the financing statement is filed as a fixture filing (section 490:9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this State.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor when it is filed to perfect a security interest in

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this State, or when the debtor's location is changed to this State. Such a financing statement must state that the collateral was brought into this State or that the debtor's location was

- changed to this State under such circumstances; or
- (b) Proceeds under section 490:9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
  - (c) Collateral as to which the filing has lapsed; or
  - (d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).
- (3) A form substantially as follows is sufficient to comply with subsection (1):
- Name of debtor (or assignor) .....
  - Address.....
  - Name of secured party (or assignee).....
  - Address.....
  - 1. This financing statement covers the following types (or items) of property:  
(Describe).....
  - 2. (If collateral is crops) The above described crops are growing or are to be grown on:  
(Describe Real Estate) .....
  - (Record owner or record lessee) .....
  - 3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:  
(Describe Real Estate) .....
  - (Record owner or record lessee) .....
  - 4. (If products of collateral are claimed) Products of the collateral are also covered.  
(use) .....
  - whichever) Signature of Debtor (or Assignor)  
is)  
applicable) .....
  - Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term “financing statement” means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 490:9-103, or a financing statement filed as a fixture filing (section 490: 9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must (unless it is a fixture filing under section 490:9-313) recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner or record lessee.

(6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(7) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

26. By amending section 490:9-403 to read:

**"Sec. 490:9-403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by book and page number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2), of section 490:9-405, including payment of the required fee. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so

arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) A filing officer shall record and index each statement in the manner provided in chapter 502. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement (where the collateral is crops or goods which are or are to become fixtures) shall be considered a grantor with respect to the financing statement and the secured party (or assignee) shall be considered a grantee with respect to the financing statement.

(5) The fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be \$2 per page.

(6) If the debtor is a transmitting utility (subsection (5) of section 9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 9-408 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

27. By amending section 490:9-404 to read:

**"Sec. 490:9-404 Termination statement.** (1) If a financing statement covering consumer goods is filed on or after July 1, 1978, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by book and page number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by book and page number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying

with subsection (2) of section 490:9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) The filing officer, on presentation of such a termination statement, must record and index it in the manner provided in chapter 502.

(3) The fee for filing and indexing a termination statement shall be \$2 per page."

28. By amending section 490:9-405 to read:

**"Sec. 490:9-405 Assignment of security interest; duties of filing officer; fees.**

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such financing statement the filing officer shall process the same as provided in section 490:9-403(4). The fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be \$2 per page.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record. Such statement shall set forth the name of the secured party of record and the debtor, the name and address of the assignee, the date of filing of the financing statement and the book and page number and shall contain a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. The filing officer, upon presentation of such a separate statement, shall record and index such separate statement in the manner provided in chapter 502. The fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$2 per page.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

29. By amending section 490:9-406 to read:

**"Sec. 490:9-406 Release of collateral; duties of filing officer; fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the book and page number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 490:9-405, including payment of the required fee. The filing officer, upon presentation of such statement of release, shall record and index such statement in the manner provided in chapter 502. The fee for filing and noting such a statement of release shall be \$2 per page."

30. By amending section 490:9-501 to read:

**“Sec. 490:9-501 Default; procedure when security agreement covers both real and personal property.** (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclosure or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 490:9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in section 490:9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of section 490:9-504 and section 490:9-505) and with respect to redemption of collateral (section 490:9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

- (a) Subsection (2) of section 490:9-502 and subsection (2) of section 490:9-504 insofar as they require accounting for surplus proceeds of collateral;
- (b) Subsection (3) of section 490:9-504 and subsection (1) of section 490:9-505 which deals with disposition of collateral;
- (c) Subsection (2) of section 490:9-505 which deals with acceptance of collateral as discharge of obligation;
- (d) Section 490:9-506 which deals with redemption of collateral; and
- (e) Subsection (1) of section 490:9-507 which deals with the secured party's liability for failure to comply with this Part.

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

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

31. By amending section 490:9-504 to read:

**“Sec. 490:9-504 Secured party's right to dispose of collateral after default; effect of disposition.** (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to



the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

- (a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;
- (b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;
- (c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of this interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

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

- (a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
  - (b) In any other case, if the purchaser acts in good faith.
- (5) A person who is liable to a secured party under a guaranty, indorse-

ment, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article.”

32. By amending section 490:9-505 to read:

“**Sec. 490:9-505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.** (1) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under section 490:9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 490:9-507(1) on secured party’s liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor’s renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under section 490:9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor’s obligation.”

34.† By adding a new Article to read:

## “ARTICLE 11 EFFECTIVE DATE AND TRANSITION PROVISIONS

**Sec. 490:11-101 Effective date.** This Act shall become effective at 12:01 A.M. on July 1, 1979.

**Sec. 490:11-102 Preservation of old transition provision.** The provisions of chapter 490, effective on January 1, 1967, herein referred to as “old U.C.C.” shall continue to apply to the amendments herein provided herein referred to as “new U.C.C.” and for this purpose the old U.C.C. and new U.C.C. shall be considered one continuous statute.

**Sec. 490:11-103 Transition to new U.C.C.—General Rule.** Transactions validly entered into after January 1, 1967 and before July 1, 1979, and which were subject to the provisions of old U.C.C. and which would be subject to this Act as amended if they had been entered into after the effective date of July 1, 1979 and the rights, duties and interests flowing from such transactions remain valid after

†There is no “33” in law as enacted.

the latter date and may be terminated, completed, consummated or enforced as required or permitted by the new U.C.C. Security interests arising out of such transactions which are perfected when the new U.C.C. becomes effective shall remain perfected until they lapse as provided in the new U.C.C., and may be continued as permitted by new U.C.C., except as stated in section 490:11-105.

**Sec. 490:11-104 Transition provision on change of requirement of filing.** A security interest for the perfection of which filing or the taking of possession as required under old U.C.C. and which attached prior to the effective date of July 1, 1979 but was not perfected shall be deemed perfected on the effective date of the new U.C.C. if the new U.C.C. permits perfection without filing or authorizes filing in the office or offices where a prior effective filing was made.

**Sec. 490:11-105 Transition provision on change of place of filing.** (1) A financing statement or continuation statement filed prior to July 1, 1979 which shall not have lapsed prior to July 1, 1979 shall remain effective for the period provided in the old U.C.C., but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of July 1, 1979, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the new U.C.C.

(3) The effectiveness of any financing statement or continuation statement filed prior to July 1, 1979 may be continued by a continuation statement as permitted by the new U.C.C., except that if the new U.C.C. requires a filing in an office where there was no previous financing statement, a new financing statement conforming to section 490:11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the new U.C.C. had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of section 490:9-402 of the new U.C.C. on the effective date of July 1, 1979.

**Sec. 490:11-106 Required refilings.** (1) If a security interest is perfected or has priority when this Act takes effect as to all persons or as to certain persons without any provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4)† A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this Act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the U.C.C. or under any statute or other law repealed

†There are no subsections "(2)" and "(3)" in law as enacted.

or modified by this Act is still effective. Section 490:9-401 and section 490:9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of section 490:9-403(3) for continuation statements apply to such a financing statement.

**Sec. 490:11-107 Transition provisions as to priorities.** Except as otherwise provided in Article 11, old U.C.C. shall apply to any question of priority if the positions of the parties were fixed prior to the effective date of July 1, 1979. In other cases questions of priority shall be determined by the new U.C.C.

**Sec. 490:11-108 Presumption that rule of law continues unchanged.** Unless a change in law has clearly been made, the provisions of the new U.C.C. shall be deemed declaratory of the meaning of the old U.C.C.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.\*

SECTION 3. This Act shall take effect on July 1, 1979.

(Approved June 1, 1978.)

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\*Edited accordingly.