

12A:1-105 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 12A:1-105 et al (Uniform Commercial code-revise)

LAWS 1981 CHAPTER 138

Bill No. A1691

Sponsor(s) Visotcky and others

Date Introduced May 5, 1980

Committee: Assembly Judiciary, Law Public Safety and Defense

Senate Labor, Industry and Professions

Amended during passage Yes Substituted for S636
No (bill and Senate com-
mittee statement--
attached)

Date of Passage: Assembly Sept. 22, 1980

Senate Feb. 9, 1981

Date of approval May 4, 1981

Following statements are attached if available:

Sponsor statement Yes ~~XX~~ (Below)

Committee Statement: Assembly Yes ~~XX~~

Senate Yes ~~XX~~

Fiscal Note ~~XX~~s No

Veto Message ~~XX~~s No

Message on signing Yes ~~XX~~

Following were printed:

Reports ~~YXX~~ No

Hearings ~~YXX~~ No

Sponsors' Statement:

The purpose of this bill is to update New Jersey's Uniform Commercial Code by enacting changes to the code which have been approved by the National Conference on Uniform State Laws and the American Law Institute since the code was adopted in New Jersey. For a more detailed explanation of the changes to the code, see the statement to Senate No. 636 of 1980.

6/12/81

(Over)

See: 1972 Official Text of Article 9 of Uniform Commercial Code.

(TB 115)

(C74)

(A496)

ASSEMBLY, No. 1691

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1980

By Assemblymen VISOTCKY, HOLLENBECK, KARCHER,
PAOLELLA, FLYNN and BATE

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT to amend and supplement the Uniform Commercial Code
(Title 12A of the New Jersey Statutes), and enacting and adding
chapter 11 to Title 12A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

(Text not printed pursuant to resolution by the General
Assembly because an identical bill has been introduced
in the Senate. See Senate No. 636 of 1980 for text.)

STATEMENT

The purpose of this bill is to update New Jersey's Uniform Com-
mercial Code by enacting changes to the code which have been ap-
proved by the National Conference on Uniform State Laws and the
American Law Institute since the code was adopted in New Jersey.
For a more detailed explanation of the changes to the code, see the
statement to Senate No. 636 of 1980.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1691

STATE OF NEW JERSEY

DATED: JUNE 26, 1980

The purpose of this bill is to update New Jersey's Uniform Commercial Code by enacting changes to the code which have been approved by the National Conference on Uniform State Laws and the American Law Institute since the code was adopted in New Jersey. For a more detailed explanation of the changes to the code, see the statement to Senate Bill No. 636 of 1980.

This bill is supported by the New Jersey Bar Association, the financial community, and those involved in commercial code work. This bill would conform sections of the U. C. C. to those of the other 30 states who have adopted these provisions.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No. 636

STATE OF NEW JERSEY

DATED: JANUARY 26, 1981

This bill has been drafted by the Division of Law Revision of the Law Revision and Legislative Services Agency. The division has a duty to receive and consider suggestions and recommendations from the National Conference of Commissioners on Uniform State Laws and the American Law Institute for the improvement and modification of the general and permanent statute law of the State, and bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions.

The purpose of this bill is to update New Jersey's Uniform Commercial Code to include the bulk of the amendments set forth in the 1972 Official Text of Article 9 (chapter 9 in New Jersey) and related sections of the Uniform Commercial Code, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

New Jersey should enact the 1972 amendments to the code to provide clarity and more complete answers to gray area questions on secured transactions. It is equally important and certainly the underlying rationale of the code to have uniformity in this important area of commercial law. Twenty-two states have incorporated the 1972 amendments into their existing law, including California, Illinois, New York and Virginia. In three other states, including Michigan and Ohio, the 1972 changes have been enacted and will be in effect by July 1, 1979. Thus, by mid-1979, exactly one-half of the states will have the 1972 amendments in effect. The national trend is clearly toward adoption of the 1972 amendments.

This need for an updating of chapter 9 was pointed out by Justice Pashman of the New Jersey Supreme Court in the case of *IAC, Ltd. v. Princeton Porsche-Audi*, 75 N. J. 379 (1978). Speaking for a unanimous Court in a controversy involving N. J. S. 12A:9-103 on multiple state transactions, the jurist reached the result called for by the 1972 amendment to that section, despite the fact that other state courts had reached an opposite conclusion under the same pre-1972 N. J. S. 12A:9-103 section that New Jersey has. Said Justice Pashman: "Although our Legislature has not yet enacted the 1972 amendments to

Article 9 [chapter 9], we believe it is appropriate to accord some deference to the views of the code drafters [of the 1972 amendments] where they might shed light on the instant problem." *IAC, Ltd. v. Princeton Porsche-Audi, supra*, at 386-87. Thus, in this 1978 case, the New Jersey Supreme Court specifically followed the 1972 code amendments despite their nonexistence in this State.

Following is a summary of the changes set forth in this bill:

Sections 1 through 4 (N. J. S. 12A :1-105, 12A :1-201, 12A :2-107, and 12A :5-116) are amendments to nonchapter 9 sections and are necessary to have these areas of the code which tangentially touch on secured transactions correspond to the changes made in chapter 9.

Section 5 amends the title of chapter 9 of Title 12A.

Section 6 (N. J. S. 12A :9-102) sets forth the policy and subject matter of chapter 9. The amendments provide that with the exception of the exclusions in N. J. S. 12A :9-104 all secured transactions are covered by chapter 9. In addition, the words "contract rights" are deleted.

Section 7 (N. J. S. 12A :9-103) deals with perfection of multiple state transactions. This section is entirely rewritten. It lays down the basic rule expressed in N. J. S. 12A :9-103(1)(b) that the controlling law as to perfection of security interests and the effect of perfection or non-perfection where more than one jurisdiction is involved in a transaction, is the law of the jurisdiction where the assertion that the security interest is perfected or unperfected. There are three exceptions. They are N. J. S. 12A :9-103(1)(c), 12A :9-103(2) and 12A :9-103(3).

The amendments also provide that where collateral has been moved into this State, refiling to perfect must be done within certain periods of time.

Section 8 (N. J. S. 12A :9-104) sets forth the transactions that are excluded from chapter 9. The amendments provide that railway equipment trusts are no longer excluded, although subsequent sections exempt railway financing on rolling stock from the filing provisions of chapter 9; that chapter 9 does not apply to security interests created by governmental debtors; and that transfer of claims under insurance policies and deposit accounts, while generally excluded under this section, are subject to the provisions of N. J. S. 12A :9-306 (proceeds) and N. J. S. 12A :9-312 (priorities in proceeds).

Section 9 (N. J. S. 12A :9-105) is the definitions section of chapter 9. "Deposit account", "Encumbrance", "Mortgage" and "pursuant to commitment" are now defined. "Contract right(s)" is deleted from the definition of "account debtor", "collateral", "Debtor", "Goods" and "Secured Party". "Goods" excludes minerals, including oil and gas before extraction, but now includes standing timber which is to be cut and removed under a conveyance or contract of sale.

A charter or other contract involving the use or hire of a vessel is classified as an account and not chattel paper. This amendment is included in N. J. S. 12A:9-105(1)(b) and N. J. S. 12A:9-106. This classification was not included in the version of the code adopted by New Jersey in 1961, not having been proposed by the National Commissioners until 1966. Other states have adopted this language and New Jersey should do likewise.

Section 10 (N. J. S. 12A:9-106) expands the definition of "Account" to include a right to payment whether or not it has been earned by performance, as a result of which the term "contract right" has been eliminated from chapter 9 as unnecessary. "Money" is expressly excluded from the definition of "General intangibles" to preclude any possibility that a security interest in money might be perfected by filing.

Section 11 (to be N. J. S. 12A:9-114) is a new section designed to clear up the uncertainty that exists as to filing and notification practices applicable to goods delivered on true consignment.

Section 12 (N. J. S. 12A:9-203) amends the existing law to merge attachment and enforceability of security interests into one section.

Section 13 (N. J. S. 12A:9-204) deals with after-acquired property and future advances. Former references to attachment of security interests are now in N. J. S. 12A:9-203. Limitations on security interests in after-acquired crops have been eliminated. The title and body of N. J. S. 12A:9-204 have been amended accordingly.

Section 14 (N. J. S. 12A:9-205) deletes "contract rights".

Section 15 (N. J. S. 12A:9-301) deals with priorities over unperfected security interests and also with the rights of a "Lien Creditor". Knowledge of a security interest will no longer subordinate the lien creditor to the unfiled security interest. New subsection (4) deals with the question of the extent to which advances made under a perfected security interest after the rights of a lien creditor have attached to the collateral will come ahead of the position of the lien creditor—giving an absolute priority for 45 days to the security interest for advances over a federal tax lien under the Federal Tax Lien Act of 1966.

Section 16 (N. J. S. 12A:9-302) states when filing to perfect a security interest is required, and also sets forth those security interests which need not be filed, or if filed, will not be effective.

One change provides that all purchase money security interests in farm equipment must be filed to be perfected regardless of value. Under present law filing is not required unless the cost is in excess of \$500.00.

New sections exempt from filing security interests created by assignments of beneficial interests in trusts and estates, and assignments for the benefit of creditors.

Section 17 (N. J. S. 12A:9-304) deals with perfection of security interests in instruments, documents and goods covered by documents. One change makes clear that a security interest in money cannot be perfected by filing. The other change relates to the notice to achieve priority between conflicting security interests in inventory contained in a subsequent section (N. J. S. 12A:9-312).

Section 18 (N. J. S. 12A:9-305) deals with perfection of security interests by the secured party's taking possession of the collateral. "Money" is added to this section to make it consistent with N. J. S. 12A:9-304.

Section 19 (N. J. S. 12A:9-306) defines "Proceeds" and states the secured party's rights on disposition of collateral or proceeds.

By this section insurance payable by reason of loss or damage to the collateral will be proceeds.

A second change provides an additional method by which the secured party may continue his perfected security interest in proceeds of collateral, and amends an existing method to continue perfection of his interest.

The final amendment to this section deals with insolvency proceedings by or against a debtor. The change limits a secured party's interest in proceeds to those items listed and makes clear that the claim to cash allowed in insolvency is exclusive of any other claim based on tracing.

Section 20 (N. J. S. 12A:9-307) deals with protection of buyers of goods. The change in subsection (2) is necessary to conform to the proposed amendment of N. J. S. 12A:9-302(1)(c) deleting the provision that a purchase money security interest in farm equipment having an original purchase price not in excess of \$500.00 need not be filed. New subsection (3) clarifies the extent to which future advances under a security interest may outrank the rights of a buyer not in the ordinary course of business.

Section 21 (N. J. S. 12A:9-308) deals with the purchase of chattel paper and instruments. The amendments are basically to clarify this section, but the changes also make the rules of this section applicable to negotiable instruments. Under present law the holder of a negotiable instrument is, under some circumstances, in a less protected position against competing claims than the holder of chattel paper. Under the changes, the holder of a negotiable instrument who may not qualify as a holder in due course may nevertheless qualify for the protections of this section.

Section 22 (N. J. S. 12A:9-312) deals with priorities among conflicting security interests in the same collateral.

The basic changes are:

Subsection (5)(a) sets forth the basic rule that conflicting perfected security interests rank by their priority in time, dating back to the respective times when without interruption the security interests were perfected by filing or taking possession of the collateral. Further, subsection (6) is amended to state the rule that a date of filing or perfection as to collateral is also the date of filing or perfection as to proceeds.

Subsection (3) is concerned with the priority of purchase money security interests in inventory and the changes thereto answer unresolved questions under the present code concerning the procedure for achieving such priority.

Subsection (4) concerning collateral other than inventory is amended to include proceeds of the collateral.

New subsection (7) sets forth the priority of future advances against an intervening secured party.

Section 23 (N. J. S. 12A:9-313) deals with the priority of security interests in fixtures.

The basic changes are:

In subsection (1) definitions of "fixtures" and "construction mortgage" are provided, and the concept of "fixture filing" is introduced.

Subsection (2) provides that a security interest may be created in goods which are fixtures, subject to subsection (3), which provides that an encumbrance upon fixtures can still be created pursuant to real estate law.

Subsection (4) fixes the priorities between a perfected security interest in fixtures and an encumbrance upon real estate.

Subsection (5) fixes the priorities between a security interest in fixtures, whether or not perfected, and an encumbrance upon real estate.

Subsection (6) establishes a special priority for construction mortgages that overrides the priority for purchase money security interests in fixtures set forth in subsection (4), but this priority applies only during the construction period leading to the completion of the improvement.

Subsection (7) deals with an encumbrancer or owner of the real estate who is not the debtor, except in cases covered in the previous sections.

Subsection (8) is changed for clarity because of the definition of "Encumbrance" in N. J. S. 12A:9-105(1)(g).

Section 24 (N. J. S. 12A:9-318) deals with account debtors. The principal changes conform to the proposed elimination of the term "contract right" in N. J. S. 12A:9-106.

Section 25 (N. J. S. 12A:9-401) deals with the place of filing to perfect security interests. The changes are:

Subsection (1)(a) is amended to include future crops. Subsection (1)(b) is amended to conform with the changes in N. J. S. 12A:9-103 and N. J. S. 12A:9-313. That amendment makes it clear that a fixture filing is to be in the office where a real estate mortgage would be recorded.

Subsection (4) deals with the necessity of filing in this State in multiple state transactions. The deletion conforms to the proposed changes in N. J. S. 12A:9-103.

Subsection (5) is new and defines residence of an organization for filing purposes.

Section 26 (N. J. S. 12A:9-402) deals with the requisites of financing statements and amendments. The changes are:

Subsection (1) provides that a financing statement is sufficient if signed only by the debtor and gives the names of the debtor and secured party. This subsection also provides for the use of copies of a security agreement or financing statement.

Subsection (2) sets forth the instances when a financing statement may be signed by the secured party only. It would cover the situations where a debtor's location is changed to this State, where a filing has lapsed and where the debtor has changed his name.

Subsection (4) clarifies existing law for the amendment of a financing statement by specifically requiring that it be signed by both the debtor and the secured party.

Subsection (5) is new and states what the financing statement, which would be required by the proposed amendments to N. J. S. 12A:9-103 and N. J. S. 12A:9-313, must contain.

Subsection (6) is new and states when a recorded mortgage will be effective as a financing statement filed as a fixture filing.

Subsection (7) is new and relates to the problem of showing the proper name of the debtor in the financing statement. Where the debtor changes his name or company name so that it becomes "seriously misleading," the secured party must file a new statement within 4 months after the change in order to perfect a security interest in collateral acquired by the debtor more than 4 months after the change. Finally, this section keeps a financing statement effective even though the secured party consents to transfer of the collateral.

Changes in the form of the suggested financing statement in subsection (3) conform to the foregoing and require that the secured party make clear that a financing statement is intended to be filed as a fixture filing in the real estate records.

Section 27 (N. J. S. 12A:9-403) deals with what constitutes filing, duration of filing, the effect of a lapsed filing and the duties of the filing officer. The principal changes are:

Subsection (2) provides that every filed financing statement is effective for 5 years unless a continuation statement is filed prior to lapse. However, under subsection (6), which is new, a real estate mortgage, effective as a fixture filing, remains effective until released or satisfied of record. The 60-day grace period has been eliminated, except that there is such a grace period following insolvency proceedings so that a security interest will not lapse during the course of such proceedings. This subsection also fixes the status of pre-lapse creditors and purchasers.

Subsection (3) fixes the time for filing a continuation statement and sets forth the duties of the filing officer. There is a new language to cover the filing of a continuation statement by an assignee of the secured party of record where the assignment is not already filed.

Subsection (4) explicitly states that fixture filings and statements covering timber to be cut or minerals (including gas and oil), or accounts resulting from the latter shall be indexed in the real estate records.

Section 28 (N. J. S. 12A:9-404) deals with termination statements and is changed to require the filing of termination statements in the case of consumer goods even without a demand by the consumer. There are other changes but these are purely formal and tie in with corresponding changes in filing mechanics in other sections.

Section 29 (N. J. S. 12A:9-405) deals with assignment of security interests and the filing of the assignment.

The changes are all conforming changes connecting with changes in mechanics in other sections of subchapter 4; with the addition of timber and minerals or the like (including oil and gas) at wellhead or minehead and accounts resulting from the sale thereof to the groups of collateral which must be filed and indexed in the real estate records; and with the provision (N. J. S. 12A:9-402(6)) that a mortgage of real estate may act as a financing statement of fixtures.

A copy of an assignment of a security interest will be sufficient for filing. This provision was included in the version of the code that New Jersey adopted in 1961, but that particular version was not adopted. If there was a valid reason for its omission, it no longer exists and filing of a copy should be permitted.

Section 30 (N. J. S. 12A:9-406) dealing with release of collateral and duties of the filing officer is amended to conform with changes in other sections concerning assignments.

Section 31 (new) adopts the filing system of chapter 9 to consignments and leases and permits consignors or lessors to file financing statements without prejudice to their positions.

Section 32 (N. J. S. 12A:9-501) deals with default by the debtor. The only change is in subsection (3) and it clears up an ambiguity as to whether a debtor could, after default, agree on the time within which a sale might be held or the time after which a secured party might keep the goods in lieu of a sale.

Section 33 (N. J. S. 12A:9-502) deletes "contract rights".

Section 34 (N. J. S. 12A:9-504) deals with the secured party's right to dispose of collateral after default and the effect of such disposition.

The major change requires the secured party to give notice to persons other than the debtor only if such persons had notified the secured party in writing of their claims of an interest in the collateral before he sent his notification to the debtor or before the debtor's renunciation of his rights. There is a further provision that the debtor may renounce or modify his right to notice after, but not before, default.

Section 35 (N. J. S. 12A:9-505), which provides for a procedure for the secured party to retain the collateral in satisfaction of the obligation, is amended to conform with the proposed changes governing notice in N. J. S. 12A:9-504. In addition, the time for objection by a debtor or other person entitled to receive notice from the secured party of such a proposal is shortened from 30 days of receipt to 21 days from the sending of notice.

Section 36 (chapter 11) is a new chapter and provides for the transition from original chapter 9 to amended chapter 9.

IMMEDIATE RELEASE

FOR FURTHER INFORMATION

MAY 4, 1981

PAT SWEENEY

Governor Brendan Byrne today signed A-1557, sponsored by Assemblyman Raymond Lesniak (D-Union), which increases the cost of court transcripts from 40¢ to 60¢ for each original folio and from 10¢ to 20¢ per copy.

Byrne signed the bill in a public ceremony in his office.

The current rates were set in 1970. Even with the increase set under this bill, New Jersey's rates remain much lower than that of those in neighboring jurisdictions and the federal system.

A-1669, sponsored by Assemblyman James Bornheimer (D-Middlesex), which provides that insurance brokers may retain the full annual commission for processing an assigned risk auto insurance policy, even if the policy is later cancelled by the insurance company for non-payment of the premium by the insured.

In addition, the bill provides that the effective date of cancellation of an assigned risk policy not brought under premium finance agreements shall be no earlier than ten days prior to the last full day for which the remitted premium, less commission, would have paid on a pro rata basis.

The bill also provides that until April 10, 1982, when an insurer cancels an insurance agency's contract, the insurer must pay the broker commissions for three years on all written on compulsory auto insurance business renewals of policies which the broker originally sold.

A-1691, sponsored by Assemblyman Richard Visotcky (D-Bergen), which amends New Jersey's Chapter Nine of the Uniform Commercial Code.

The bill incorporates into our law the changes in the 1972 Official Text of Article Nine, approved by the National Conference of commissioners on Uniform State Law and the American Law Institute. Thrity one states have already adopted the amendments.

It will become effect in six months to allow the bar to familiarize itself with the changes.

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