

ASSEMBLY, No. 978

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman GEIST

1 AN ACT concerning certain secured transactions and amending  
2 N.J.S.12A:9-301 and N.J.S.12A:9-312.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

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7 1. N.J.S.12A:9-301 is amended to read as follows:  
8 12A:9-301. Persons who take priority over unperfected security  
9 interests; right of "lien creditor".

10 (1) Except as otherwise provided in subsection (2), an unperfected  
11 security interest is subordinate to the rights of:

12 (a) Persons entitled to priority under 12A:9-312;

13 (b) A person who becomes a lien creditor before the security  
14 interest is perfected;

15 (c) In the case of goods, instruments, documents, and chattel  
16 paper, a person who is not a secured party and who is a transferee in  
17 bulk or other buyer not in ordinary course of business, or is a buyer of  
18 farm products in ordinary course of business, to the extent that he  
19 gives value and receives delivery of the collateral without knowledge  
20 of the security interest and before it is perfected;

21 (d) In the case of accounts and general intangibles, a person who  
22 is not a secured party and who is a transferee to the extent that he  
23 gives value without knowledge of the security interest and before it is  
24 perfected.

25 (2) If the secured party files with respect to a purchase money  
26 security interest before or within **[10]** 20 days after the debtor receives  
27 possession of the collateral, he takes priority over the rights of a  
28 transferee in bulk or of a lien creditor which arise between the time the  
29 security interest attaches and the time of filing.

30 (3) A "lien creditor" means a creditor who has acquired a lien on  
31 the property involved by attachment, levy or the like and includes an  
32 assignee for benefit of creditors from the time of assignment, and a

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 trustee in bankruptcy from the date of the filing of the petition or a  
2 receiver in equity from the time of appointment.

3 (4) A person who becomes a lien creditor while a security interest  
4 is perfected takes subject to the security interest only to the extent that  
5 it secures advances made before he becomes a lien creditor or within  
6 45 days thereafter or made without knowledge of the lien or pursuant  
7 to a commitment entered into without knowledge of the lien.

8 (cf: P.L.1981, c.138, s.15)

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10 2. N.J.S.12A:9-312 is amended to read as follows:

11 12A:9-312. Priorities Among Conflicting Security Interests in the  
12 Same Collateral.

13 (1) The rules of priority stated in other sections of this subchapter  
14 and in the following sections shall govern when applicable: 12A:4-208  
15 with respect to the security interests of collecting banks in items being  
16 collected, accompanying documents and proceeds; 12A:9-103 on  
17 security interests related to other jurisdictions; 12A:9-114 on  
18 consignments.

19 (2) (Deleted by amendment, P.L.1962, c.203, s.4.)

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

24 (a) The purchase money security interest is perfected at the time  
25 the debtor receives possession of the inventory; and

26 (b) The purchase money secured party gives notification in writing  
27 to the holder of the conflicting security interest if the holder had filed  
28 a financing statement covering the same types of inventory (i) before  
29 the date of the filing made by the purchase money secured party, or (ii)  
30 before the beginning of the 21-day period where the purchase money  
31 security interest is temporarily perfected without filing or possession  
32 (subsection (5) of 12A:9-304); and

33 (c) The holder of the conflicting security interest receives the  
34 notification within five years before the debtor receives possession of  
35 the inventory; and

36 (d) The notification states that the person giving the notice has or  
37 expects to acquire a purchase money security interest in inventory of  
38 the debtor, describing such inventory by item or type.

39 (4) A purchase money security interest in collateral other than  
40 inventory has priority over a conflicting security interest in the same  
41 collateral or its proceeds if the purchase money security interest is  
42 perfected at the time the debtor receives possession of the collateral  
43 or within [10] 20 days thereafter.

44 (5) In all cases not governed by other rules stated in this section  
45 (including cases of purchase money security interests which do not  
46 qualify for the special priorities set forth in subsections (3) and (4) of

1 this section), priority between conflicting security interests in the same  
2 collateral shall be determined according to the following rules:

3 (a) Conflicting security interests rank according to priority in time  
4 of filing or perfection. Priority dates from the time a filing is first  
5 made covering the collateral or the time the security interest is first  
6 perfected, whichever is earlier, provided that there is no period  
7 thereafter when there is neither filing nor perfection.

8 (b) So long as conflicting security interests are unperfected, the  
9 first to attach has priority.

10 (6) For the purposes of subsection (5) a date of filing or perfection  
11 as to collateral is also a date of filing or perfection as to proceeds.

12 (7) If future advances are made while a security interest is  
13 perfected by filing, the taking of possession, or under 12A:8-321 on  
14 securities, the security interest has the same priority for the purposes  
15 of subsection (5) with respect to the future advances as it does with  
16 respect to the first advance. If a commitment is made before or while  
17 the security interest is so perfected, the security interest has the same  
18 priority with respect to advances, made pursuant thereto. In other  
19 cases a perfected security interest has priority from the date the  
20 advance is made.

21 (cf: P.L.1989, c.348, s.55)

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23 3. This act shall take effect immediately.

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#### STATEMENT

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28 The Uniform Commercial Code provides that a purchase money  
29 security interest must be perfected within a certain period of time in  
30 order for the secured party or creditor to have priority over a  
31 conflicting security interest, transferee in bulk, or lien creditor. This  
32 bill extends the period for perfection of a purchase money security  
33 interest from 10 to 20 days. The benefits of a 20-day period are: it is  
34 more cost-effective; it allows for trial periods and inspection periods;  
35 it provides a creditor with adequate time to perfect his security  
36 interest; and it has already been adopted by approximately 40 states so  
37 that a similar adoption by the State of New Jersey will serve to foster  
38 achievement of the fundamental objective of establishing uniformity in  
39 the various jurisdictions under the Uniform Commercial Code.

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44 Extends period for perfection of a purchase money security interest.