

ASSEMBLY, No. 978

STATE OF NEW JERSEY

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

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

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

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

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

11 (1) The rules of priority stated in other sections of this subchapter
12 and in the following sections shall govern when applicable: 12A:4-210
13 with respect to the security interests of collecting banks in items being
14 collected, accompanying documents and proceeds; 12A:9-103 on
15 security interests related to other jurisdictions; 12A:9-114 on
16 consignments.

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

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

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

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

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

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

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

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

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

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

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

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

19 (cf: P.L.1995, c.28, s.10)

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21 3. This act shall take effect immediately.

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