

SENATE, No. 610

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Senator MARTIN

1 AN ACT concerning security interests, amending various parts of the
2 statutory law and supplementing chapter 11 of Title 12A of the
3 New Jersey Statutes.

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

7
8 1. N.J.S.12A:9-105 is amended to read as follows:

9 12A:9-105. Definitions and Index of Definitions.

10 (1) In this chapter unless the context otherwise requires:

11 (a) "Account debtor" means the person who is obligated on an
12 account, chattel paper or general intangible;

13 (b) "Chattel paper" means a writing or writings which evidence
14 both a monetary obligation and a security interest in or a lease of
15 specific goods, but a charter or other contract involving the use or hire
16 of a vessel is not chattel paper. When a transaction is evidenced both
17 by such a security agreement or a lease and by an instrument or a
18 series of instruments, the group of writings taken together constitutes
19 chattel paper;

20 (c) "Collateral" means the property subject to a security interest,
21 and includes accounts and chattel paper which have been sold;

22 (d) "Debtor" means the person who owes payment or other
23 performance of the obligation secured, whether or not he owns or has
24 rights in the collateral, and includes the seller of accounts or chattel
25 paper. Where the debtor and the owner of the collateral are not the
26 same person, the term "debtor" means the owner of the collateral in
27 any provision of the chapter dealing with the collateral, the obligor in
28 any provision dealing with the obligation, and may include both where
29 the context so requires;

30 (e) "Deposit account" means a demand, time, savings, passbook or
31 like account maintained with a bank, savings and loan association,
32 credit union or like organization, other than an account evidenced by
33 a certificate of deposit;

34 (f) "Document" means document of title as defined in the general

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

Matter underlined thus is new matter.

1 definitions of chapter 1 (12A:1-201) , and a receipt of the kind
2 described in subsection (2) of 12A:7-201;

3 (g) "Encumbrance" includes real estate mortgages and other liens
4 on real estate and all other rights in real estate that are not ownership
5 interests;

6 (h) "Goods" includes all things which are movable at the time the
7 security interest attaches or which are or are to become fixtures
8 (12A:9-313), but does not include money, documents, instruments,
9 accounts, chattel paper, general intangibles, or minerals or the like
10 (including oil and gas) before extraction. "Goods" also includes
11 standing timber which is to be cut and removed under a conveyance or
12 contract for sale, the unborn young of animals, and growing crops;

13 (i) "Instrument" means a negotiable instrument (defined in
14 12A:3-104), or a certificated security (defined in 12A:8-102) or any
15 other writing which evidences a right to the payment of money and is
16 not itself a security agreement or lease and is of a type which is in
17 ordinary course of business transferred by delivery with any necessary
18 indorsement or assignment;

19 (j) "Mortgage" means a consensual interest created by a real estate
20 mortgage, a trust deed on real estate, or the like;

21 (k) An advance is made "pursuant to commitment" if the secured
22 party has bound himself to make it, whether or not a subsequent event
23 of default or other event not within his control has relieved or may
24 relieve him from his obligation;

25 (l) "Security agreement" means an agreement which creates or
26 provides for a security interest;

27 (m) "Secured party" means a lender, seller or other person in
28 whose favor there is a security interest, including a person to whom
29 accounts or chattel paper have been sold. When the holders of
30 obligations issued under an indenture of trust, equipment trust
31 agreement or the like are represented by a trustee or other person, the
32 representative is the secured party.

33 (2) Other definitions applying to this chapter and the sections in
34 which they appear are:

35 "Account." 12A:9-106.

36 "Attach." 12A:9-203.

37 "Construction mortgage." 12A:9-313 (1).

38 "Consumer goods." 12A:9-109 (1).

39 "Equipment." 12A:9-109 (2).

40 "Farm products." 12A:9-109 (3).

41 "Fixture." 12A:9-313.

42 ["Fixture filing." 12A:9-313.]

43 "General intangibles." 12A:9-106.

44 "Inventory." 12A:9-109 (4).

45 "Lien creditor." 12A:9-301 (3).

46 "Proceeds." 12A:9-306 (1).

1 "Purchase money security interest." 12A:9-107.

2 "United States." 12A:9-103 (3).

3 (3) The following definitions in other chapters apply to this
4 chapter:

5 "Check." 12A:3-104.

6 "Contract for sale." 12A:2-106.

7 "Holder in due course." 12A:3-302.

8 "Note." 12A:3-104.

9 "Sale." 12A:2-106.

10 (4) In addition chapter 1 contains general definitions and principles
11 of construction and interpretation applicable throughout this chapter.
12 (cf: P.L.1989, c.348, s.49)

13

14 2. N.J.S.12A:9-302 is amended to read as follows:

15 12A:9-302. When Filing Is Required to Perfect Security Interests;
16 Security Interests to Which Filing Provisions of This Chapter Do Not
17 Apply.

18 (1) A financing statement shall be filed to perfect all security
19 interests except the following:

20 (a) A security interest in collateral in possession of the secured
21 party under 12A:9-305;

22 (b) A security interest temporarily perfected in instruments or
23 documents without delivery under 12A:9-304 or in proceeds for a
24 10-day period under 12A:9-306;

25 (c) A security interest created by an assignment of a beneficial
26 interest in a trust or a decedent's estate;

27 (d) A purchase money security interest in consumer goods; but
28 filing is required for a motor vehicle required to be registered; and
29 [fixture] filing is required for priority over conflicting interests in
30 fixtures to the extent provided in 12A:9-313;

31 (e) An assignment of accounts which does not alone or in
32 conjunction with other assignments to the same assignee transfer a
33 significant part of the outstanding accounts of the assignor;

34 (f) A security interest of a collecting bank ([12A:4-208] 12A:210)
35 or in securities (12A:8-321) or arising under the chapter on sales (see
36 12A:9-113) or covered in subsection (3) of this section;

37 (g) An assignment for the benefit of all the creditors of the
38 transferor, and subsequent transfers by the assignee thereunder.

39 (2) If a secured party assigns a perfected security interest, no filing
40 under this chapter is required in order to continue the perfected status
41 of the security interest against creditors of and transferees from the
42 original debtor.

43 (3) The filing of a financing statement otherwise required by this
44 chapter is not necessary or effective to perfect a security interest in
45 property subject to:

46 (a) A statute or treaty of the United States which provides for a

1 national or international registration or a national or international
2 certificate of title or which specifies a place of filing different from that
3 specified in this chapter for filing of the security interest; or

4 (b) The following statutes of this State:
5 R.S.39:10-1 to R.S.39:10-9 both inclusive;
6 P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);
7 R.S.39:10-10 to R.S.39:10-16 both inclusive;
8 R.S.39:10-18 to R.S.39:10-25 both inclusive;
9 P.L.1984, c.152 (C.12:7A-1 to C.12:7A-29 both inclusive);

10 but during any period in which collateral is inventory held for sale by
11 a person who is in the business of selling goods of that kind, the filing
12 provisions of this chapter (subchapter 4) apply to a security interest in
13 that collateral created by [him] the person as debtor; or

14 (c) a certificate of title statute of another jurisdiction under the law
15 of which indication of a security interest on the certificate is required
16 as a condition of perfection (subsection (2) of 12A:9-103).

17 (4) Compliance with a statute or treaty described in subsection (3)
18 is equivalent to the filing of a financing statement under this chapter,
19 and a security interest in property subject to the statute or treaty can
20 be perfected only by compliance therewith except as provided in
21 12A:9-103 on multiple state transactions. Duration and renewal of
22 perfection of a security interest perfected by compliance with the
23 statute or treaty are governed by the provisions of the statute or
24 treaty; in other respects the security interest is subject to this chapter.
25 (cf: P.L.1995, c.28, s.9)

26

27 3. N.J.S.12A:9-313 is amended to read as follows:

28 12A:9-313. Priority of security interests in fixtures.

29 (1) In this section and in the provisions of subchapter 4 of this
30 chapter referring to [fixture filing] financing statements covering
31 fixtures, unless the context otherwise requires

32 (a) Goods are "fixtures" when they are or are to become so related
33 to particular real estate that an interest in them arises under real estate
34 law.

35 (b) [A "fixture filing" is the filing in the office where a mortgage
36 on the real estate would be filed or recorded of a financing statement
37 covering goods which are or are to become fixtures and conforming
38 to the requirements of subsection (5) of 12A:9-402.](deleted by
39 amendment, P.L. , c. .)

40 (c) A mortgage is a "construction mortgage" to the extent that it
41 secures an obligation incurred for the construction of an improvement
42 on land including the acquisition cost of the land, if the recorded
43 writing so indicates.

44 (2) A security interest under this chapter may be created in goods
45 which are fixtures or may continue in goods which become fixtures,
46 but no security interest exists under this chapter in ordinary building

1 materials incorporated into an improvement on land.

2 (3) This chapter does not prevent creation of an encumbrance upon
3 fixtures pursuant to real estate law.

4 (4) A perfected security interest in fixtures has priority over the
5 conflicting interest of an encumbrancer or owner of the real estate
6 where

7 (a) The security interest is a purchase money security interest, the
8 interest of the encumbrancer or owner arises before the goods become
9 fixtures, the security interest is perfected by a [fixture] filing before
10 the goods become fixtures or within 10 days thereafter, and the debtor
11 has an interest of record in the real estate or is in possession of the real
12 estate; or

13 (b) The security interest is perfected by a [fixture] filing before the
14 interest of the encumbrancer or owner is of record, the security
15 interest has priority over any conflicting interest of a predecessor in
16 title of the encumbrancer or owner, and the debtor has an interest of
17 record in the real estate or is in possession of the real estate; or

18 (c) The fixtures are readily removable factory or office machines
19 or readily removable replacements of domestic appliances which are
20 consumer goods, and before the goods become fixtures the security
21 interest is perfected by any method permitted by this chapter; or

22 (d) The conflicting interest is a lien on the real estate obtained by
23 legal or equitable proceedings after the security interest was perfected
24 by any method permitted by this chapter.

25 (5) A security interest in fixtures, whether or not perfected, has
26 priority over the conflicting interest of an encumbrancer or owner of
27 the real estate where

28 (a) The encumbrancer or owner has consented in writing to the
29 security interest or has disclaimed an interest in the goods as fixtures;
30 or

31 (b) The debtor has a right to remove the goods as against the
32 encumbrancer or owner. If the debtor's right terminates, the priority
33 of the security interest continues for a reasonable time.

34 (6) Notwithstanding paragraph (a) of subsection (4) but otherwise
35 subject to subsections (4) and (5), a security interest in fixtures is
36 subordinate to a construction mortgage recorded before the goods
37 become fixtures if the goods become fixtures before the completion of
38 the construction. To the extent that it is given to refinance a
39 construction mortgage, a mortgage has this priority to the same extent
40 as the construction mortgage.

41 (7) In cases not within the preceding subsections, a security
42 interest in fixtures is subordinate to the conflicting interest of an
43 encumbrancer or owner of the related real estate who is not the
44 debtor.

45 (8) When the secured party has priority over all owners and
46 encumbrancers of the real estate, he may, on default, subject to the

1 provisions of subchapter 5, remove his collateral from the real estate
2 but he must reimburse any encumbrancer or owner of the real estate
3 who is not the debtor and who has not otherwise agreed for the cost
4 of repair of any physical injury, but not for any diminution in value of
5 the real estate caused by the absence of the goods removed or by any
6 necessity of replacing them. A person entitled to reimbursement may
7 refuse permission to remove until the secured party gives adequate
8 security for the performance of this obligation.
9 (cf: P.L.1981, c.138, s.23)

10

11 4. N.J.S.12A:9-401 is amended to read as follows:

12 12A:9-401. Place of filing; erroneous filing; removal of collateral.

13 (1) The proper place to file in order to perfect a security interest is
14 [as follows:15 (a) when the collateral is equipment used in farming operations, or
16 farm products, or accounts or general intangibles arising from or
17 relating to the sale of farm products by a farmer, or consumer goods,
18 then in the office of the recording officer in the county of the debtor's
19 residence or if the debtor is not a resident of this State then in the
20 office of the recording officer in the county where the goods are kept,
21 and in addition, when the collateral is crops growing or to be grown,
22 in the office of the recording officer in the county where the land is
23 located. The recording officer of the county means the register of
24 deeds and mortgages and his office in counties having such an officer
25 and office, and the county clerk and his office in other counties;26 (b) when the collateral is timber to be cut or is minerals or the like
27 (including oil and gas) or accounts subject to subsection (5) of
28 12A:9-103, or when the financing statement is filed as a fixture filing
29 (12A:9-313) and the collateral is goods which are or are to become
30 fixtures, then in the office where a mortgage on the real estate would
31 be filed or recorded;

32 (c) in all other cases, in] the office of the Secretary of State.

33 (2) [A filing which is made in good faith in an improper place or
34 not in all of the places required by this section is nevertheless effective
35 with regard to any collateral as to which the filing complied with the
36 requirements of this chapter and is also effective with regard to
37 collateral covered by the financing statement against any person who
38 has knowledge of the contents of such financing statement.](Deleted
39 by amendment, P.L. , c. .)40 (3) [A filing which is made in the proper place in this State
41 continues effective even though the debtor's residence or place of
42 business or the location of the collateral or its use, whichever
43 controlled the original filing, is thereafter changed.](Deleted by
44 amendment, P.L. , c. .)45 (4) The rules stated in 12A:9-103 determine whether filing is
46 necessary in this State.

1 (5) [For the purposes of this section, the residence of an
2 organization is its place of business if it has one or its chief executive
3 office if it has more than one place of business.](Deleted by
4 amendment, P.L. , c. .)

5 (6) The Secretary of State shall maintain records of filed financing
6 statements and of indexes to them. To the extent feasible, the
7 Secretary of State shall establish a system that allows the public
8 remote access to records and indexes and to conduct searches and
9 copy the names and addresses of debtors and creditors and
10 descriptions of collateral from any filing. The Secretary of State may
11 establish and charge a reasonable fee for this access under regulations
12 promulgated pursuant to the "Administrative Procedure Act,"
13 P.L.1968, c.410 (C.52:14B-1 et seq.).

14 (7) Each county may establish a system to provide the public
15 remote access to the records of filed financing statements and of
16 indexes to them established and maintained by the Secretary of State
17 pursuant to subsection (6) of this section and may charge a reasonable
18 fee for use of the remote access system.

19 (cf: P.L.1981, c.138, s.25)

20

21 5. N.J.S.12A:9-402 is amended to read as follows:

22 12A:9-402. Formal requisites of financing statement; amendments
23 [mortgage as financing statement] .

24 (1) A financing statement is sufficient if it gives the names of the
25 debtor and the secured party, is signed by the debtor, gives an address
26 of the secured party from which information concerning the security
27 interest may be obtained, gives a mailing address of the debtor and
28 contains a statement indicating the types, or describing the items, of
29 collateral. A financing statement may be filed before a security
30 agreement is made or a security interest otherwise attaches. When the
31 financing statement covers crops growing or to be grown, the
32 statement must also contain a description of the real estate concerned
33 and the name of the record owner thereof. When the financing
34 statement covers timber to be cut or covers minerals or the like
35 (including oil and gas) or accounts subject to subsection (5) of
36 12A:9-103, or [when the financing statement is filed as a fixture filing]
37 goods which are or are to become fixtures (12A:9-313) [and the
38 collateral is goods which are or are to become fixtures], the statement
39 must also comply with subsection (5). A copy of the security
40 agreement is sufficient as a financing statement if it contains the above
41 information and is signed by the debtor. A carbon, photographic or
42 other reproduction of a security agreement or a financing statement is
43 sufficient as a financing statement if the security agreement so
44 provides or if the original has been filed in this State.

45 (2) A financing statement which otherwise complies with
46 subsection (1) is sufficient when it is signed by the secured party

1 instead of the debtor if it is filed to perfect a security interest in

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

7 (b) Proceeds under 12A:9-306 if the security interest in the original
8 collateral was perfected. Such a financing statement must describe the
9 original collateral; or

10 (c) Collateral as to which the filing has lapsed; or

11 (d) Collateral acquired after a change of name, identity or
12 corporate structure of the debtor (subsection (7)).

13 (3) A form substantially as follows is sufficient to comply with
14 subsection (1):

15 Maturity Date (if any).....

16

17 For Filing Officer Use

18 File No.

19

20 Date and Hour of Filing

21

22 (Last Name First)

23 Name of Debtor

24 Address

25 Name(s) of Other Debtor(s) (if any)

26

27 Address

28

29 Address

30

31 Name of Secured Party

32 Address

33 Name(s) of Other Secured Party(s) (if any)

34

35 Address

36

37 Address

38 1. This financing statement covers the following types (or items)
39 of property:

40 (Describe)

41 CHECK X THE ITEMS WHICH APPLY

42

43 2. (If collateral is crops) The above described crops are growing
44 or are to be grown on:

45 (Description of real estate and name of record owner)

46

1 3. (If applicable) The above goods are or are to become fixtures
2 on (Describe Real Estate) [and this financing
3 statement is to be filed for record in the real estate records]. (If the
4 debtor does not have an interest of record) The name of a record
5 owner is

6 4. (If applicable) The above timber is standing on (Describe
7 Real Estate)
8 [and this financing statement is to be filed for record in the real estate
9 records]. (If the debtor does not have an interest of record) The
10 name of a record owner is

11 5. (If applicable) The above minerals or the like (including oil
12 and gas) or accounts will be financed at the wellhead or minehead, of
13 the well or mine located on (Describe Real Estate)
14
15 [and this financing statement is to be filed for record in the real estate
16 records]. (If the debtor does not have an interest of record) The
17 name of the record owner is

18 6. Products of collateral are also covered.

19
20 (Use whichever is applicable.)

21
22 Signature(s) of Debtor(s)
23
24

25
26 Signature(s) of Secured Party(s)
27
28

29
30 (4) A financing statement may be amended by filing a writing
31 signed by both the debtor and the secured party. An amendment does
32 not extend the period of effectiveness of a financing statement. If any
33 amendment adds collateral, it is effective as to the added collateral
34 only from the filing date of the amendment. In this chapter, unless the
35 context otherwise requires, the term "financing statement" means the
36 original financing statement and any amendments.

37 (5) A financing statement covering timber to be cut or covering
38 minerals or the like (including oil and gas) or accounts subject to
39 subsection (5) of 12A:9-103, or [a financing statement filed as a
40 fixture filing] goods which are or are to become fixtures (12A:9-313),
41 must show that it covers this type of collateral, [must recite that it is
42 to be filed for record in the real estate records, and the financing
43 statement] and must contain a description of the real estate sufficient
44 if it were contained in a mortgage of the real estate to give
45 constructive notice of the mortgage under the law of this State. If the
46 debtor does not have an interest of record in the real estate, the

1 financing statement must show the name of a record owner.

2 (6) A mortgage is effective as a financing statement [filed as a
3 fixture filing from the date of its recording] covering goods which are
4 or are to become fixtures from the date of its recording if (a) the
5 goods are described in the mortgage by item or type, (b) the goods
6 are or are to become fixtures related to the real estate described in the
7 mortgage, (c) the mortgage complies with the requirements for a
8 financing statement in this section [other than a recital that it is to be
9 filed in the real estate records], and (d) the mortgage is duly recorded.
10 No fee with reference to the financing statement is required other than
11 the regular recording and satisfaction fees with respect to the
12 mortgage.

13 (7) A financing statement sufficiently shows the name of the debtor
14 if it gives the individual, partnership or corporate name of the debtor,
15 whether or not it adds other trade names or the names of partners.
16 Where the debtor so changes his name or in the case of an
17 organization its name, identity or corporate structure that a filed
18 financing statement becomes seriously misleading, the filing is not
19 effective to perfect a security interest in collateral acquired by the
20 debtor more than 4 months after the change, unless a new appropriate
21 financing statement is filed before the expiration of that time. A filed
22 financing statement remains effective with respect to collateral
23 transferred by the debtor even though the secured party knows of or
24 consents to the transfer.

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

28 (cf: P.L.1981, c.138, s.26)

29

30 6. N.J.S.12A:9-403 is amended to read as follows:

31 12A:9-403. Filing of financing statement.

32 (1) Presentation for filing of a financing statement, tender of the
33 filing fee [and] or acceptance of the statement by the filing officer
34 constitute filing under this chapter.

35 (2) Except as provided in subsection (6) a filed financing statement
36 is effective for a period of five years from the date of filing. The
37 effectiveness of a filed financing statement lapses on the expiration of
38 the five-year period unless a continuation statement is filed prior to the
39 lapse. If a security interest perfected by filing exists at the time
40 insolvency proceedings are commenced by or against the debtor, the
41 security interest remains perfected until termination of the insolvency
42 proceedings and thereafter for a period of 60 days or until expiration
43 of the five-year period, whichever occurs later. Upon lapse the
44 security interest becomes unperfected, unless it is perfected without
45 filing. If the security interest becomes unperfected upon lapse, it is
46 deemed to have been unperfected as against a person who became a

1 purchaser or lien creditor before lapse.

2 (3) A continuation statement may be filed by the secured party
3 within six months prior to the expiration of the five-year period
4 specified in subsection (2). Any such continuation statement must be
5 signed by the secured party, identify the original statement by file
6 number and state that the original statement is still effective. A
7 continuation statement signed by a person other than the secured party
8 of record must be accompanied by a separate written statement of
9 assignment signed by the secured party of record and complying with
10 subsection (2) of 12A:9-405, including payment of the required fee.

11 Upon timely filing of the continuation statement, the effectiveness
12 of the original statement is continued for five years after the last date
13 to which the filing was effective whereupon it lapses in the same
14 manner as provided in subsection (2) unless another continuation
15 statement is filed prior to such lapse. Succeeding continuation
16 statements may be filed in the same manner to continue the
17 effectiveness of the original statement. The filing officer shall so
18 arrange matters by physical annexation of financing statements to
19 continuation statements or other related filings, or by other means,
20 that if he physically destroys the financing statements of a period more
21 than five years past, those which have been continued by a
22 continuation statement or which are still effective under subsection (6)
23 shall be retained.

24 (4) Except as provided in subsection (7), a filing officer shall mark
25 each statement with a file number and with the date and hour of filing
26 and shall hold the statement or a microfilm or other photographic copy
27 thereof for public inspection. In addition, the filing officer shall index
28 the statements according to the name of the debtor and shall note in
29 the index the file number and the address of the debtor given in the
30 statement. A financing statement covering collateral which is or is to
31 become a fixture or fixtures, or crops growing or to be grown, shall
32 also be indexed in the name of the record owner of the realty.

33 (5) The uniform fee for filing, indexing and furnishing filing data
34 for an original or a continuation statement or any amendment of either
35 shall be \$25.00.

36 (6) A real estate mortgage which is effective as a [fixture filing]
37 filed financing statement under subsection (6) of 12A:9-402 remains
38 effective [as a fixture filing] until the mortgage is released or satisfied
39 of record or its effectiveness otherwise terminates as to the real estate.

40 (7) When a financing statement covers timber to be cut or covers
41 minerals or the like (including oil and gas) or accounts subject to
42 subsection (5) of 12A:9-103, or [is filed as a fixture filing]goods
43 which are or are to become fixtures, it shall be filed [for record] and
44 the filing officer shall index it under the names of the debtor and any
45 owner of record shown on the financing statement [in the same fashion
46 as if they were the mortgagors in a mortgage of the real estate

1 described, and, to the extent that the law of this State provides for
2 indexing of mortgages under the name of the mortgagee, under the
3 name of the secured party as if he were the mortgagee thereunder, or
4 where indexing is by description in the same fashion as if the financing
5 statement were a mortgage of the real estate described].

6 (cf: P.L.1987, c.435, s.4)

7

8 7. N.J.S.12A:9-404 is amended to read as follows:

9 12A:9-404. Termination statement.

10 [12A:9-404.] (1) If a financing statement covering consumer goods
11 is filed on or after the effective date of this act, then within one month
12 or within 10 days following written demand by the debtor after there
13 is no outstanding secured obligation and no commitment to make
14 advances, incur obligations or otherwise give value, the secured party
15 must file [with each filing officer with whom the financing statement
16 was filed,] a termination statement to the effect that he no longer
17 claims a security interest under the financing statement, which shall be
18 identified by file number. In other cases whenever there is no
19 outstanding secured obligation and no commitment to make advances,
20 incur obligations or otherwise give value, the secured party must on
21 written demand by the debtor send the debtor [, for each filing officer
22 with whom the financing statement was filed,] a termination statement
23 to the effect that he no longer claims a security interest under the
24 financing statement, which shall be identified by the filing officer's file
25 number. A termination statement signed by a person other than the
26 secured party of record must be accompanied by a separate written
27 statement of assignment signed by the secured party of record and
28 complying with subsection (2) of 12A:9-405, including payment of the
29 required fee. If the affected secured party fails to file such a
30 termination statement as required by this subsection, or to send such
31 a termination statement within 10 days after proper demand therefor
32 he shall be liable to the debtor for \$100.00, and in addition for any loss
33 caused to the debtor by such failure.

34 (2) On presentation to the filing officer of such a termination
35 statement he must note it in the index and attach it to the original
36 financing statement.

37 If he has received the termination statement in duplicate, he shall
38 return one copy of the termination statement to the secured party
39 stamped to show the time of receipt thereof. If the filing officer has
40 a microfilm or other photographic record of the financing statement,
41 and of any related continuation statement, statement of assignment and
42 statement of release, he may remove the originals from the files at any
43 time after receipt of the termination statement, or if he has no such
44 record, he may remove them from the files at any time after one year
45 after receipt of the termination statement.

46 (3) The uniform fee for filing, attaching and indexing a termination

1 statement including sending or delivering the financing statement shall
2 be \$25.00.

3 (cf: P.L.1987, c.435, s.5)

4

5 8. N.J.S.12A:9-405 is amended to read as follows:

6 12A:9-405. Assignment of security interest.

7 (1) A financing statement may disclose an assignment of a security
8 interest in the collateral described in the financing statement by
9 indication in the financing statement of the name and address of the
10 assignee or by an assignment itself or a copy thereof on the face or
11 back of the statement. On presentation to the filing officer of such a
12 financing statement the filing officer shall mark the same as provided
13 in 12A:9-403(4). The uniform fee for filing, indexing and furnishing
14 filing data for a financing statement so indicating an assignment shall
15 be \$25.00.

16 (2) A secured party may assign of record all or a part of his rights
17 under a financing statement by filing [in the place where the original
18 financing statement was filed of] a separate written statement of
19 assignment signed by the secured party of record and setting forth the
20 name of the secured party of record and the debtor, the file number
21 and the date of filing of the financing statement and the name and
22 address of the assignee and containing a description of the collateral
23 assigned. A copy of the assignment is sufficient as a separate
24 statement if it complies with the preceding sentence. On presentation
25 to the filing officer of such a separate statement, the filing officer shall
26 mark such separate statement with the date and hour of filing. He
27 shall note the assignment on the index of the financing statement [, or
28 in the case of a fixture filing, or a filing covering timber to be cut, or
29 covering minerals or the like (including oil and gas) or accounts
30 subject to subsection (5) of 12A:9-103, he shall index the assignment
31 under the name of the assignor as grantor and, to the extent that the
32 law of this State provides for indexing the assignment of a mortgage
33 under the name of the assignee, he shall index the assignment of the
34 financing statement under the name of the assignee]. The uniform fee
35 for filing, indexing and furnishing filing data about such a separate
36 statement of assignment shall be \$25.00. [Notwithstanding the
37 provisions of this subsection, an assignment of record of a security
38 interest in a fixture contained in a mortgage effective as a fixture filing
39 (subsection (6) of 12A:9-402) may be made only by an assignment of
40 the mortgage in the manner provided by the law of this State other
41 than this act.]

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

44 (cf: P.L.1987, c.435, s.6)

1 9. (New section) Transition provisions for filing amendments.

2 a. A financing statement or continuation statement filed prior to the
3 effective date of this 1996 amendatory and supplementary act shall
4 remain effective until it lapses as provided pursuant to chapter 9 of
5 Title 12A of the New Jersey Statutes. Such a financing statement or
6 continuation statement covering after-acquired collateral remains
7 effective with respect to collateral acquired after the effective date of
8 this 1996 amendatory and supplementary act.

9 b. A financing statement that is filed in an office other than that of
10 the Secretary of State prior to the effective date of this 1996
11 amendatory and supplementary act and that would lapse after the
12 effective date of this 1996 amendatory and supplementary act may be
13 continued by refileing a financing statement under N.J.S.12A:11-106(2)
14 with the Secretary of State within six months before the statement
15 would otherwise lapse.

16

17 10. N.J.S.12A:2A-103 is amended to read as follows:

18 12A:2A-103. Definitions and index of definitions.

19 (1) In this chapter unless the context otherwise requires:

20 (a) "Buyer in ordinary course of business" means a person who in
21 good faith and without knowledge that the sale to the person is in
22 violation of the ownership rights or security interest or leasehold
23 interest of a third party in the goods buys in ordinary course from a
24 person in the business of selling goods of that kind but does not
25 include a pawnbroker. "Buying" may be for cash or by exchange of
26 other property or on secured or unsecured credit and includes
27 receiving goods or documents of title under a pre-existing contract for
28 sale but does not include a transfer in bulk or as security for or in total
29 or partial satisfaction of a money debt.

30 (b) "Cancellation" occurs when either party puts an end to the lease
31 contract for default by the other party.

32 (c) "Commercial unit" means such a unit of goods as by
33 commercial usage is a single whole for purposes of lease and division
34 of which materially impairs its character or value on the market or in
35 use. A commercial unit may be a single article, as a machine, or a set
36 of articles, as a suite of furniture or a line of machinery, or a quantity,
37 as a gross or carload, or any other unit treated in use or in the relevant
38 market as a single whole.

39 (d) "Conforming" goods or performance under a lease contract
40 means goods or performance that are in accordance with the
41 obligations under the lease contract.

42 (e) "Consumer lease" means a lease that a lessor regularly engaged
43 in the business of leasing or selling makes to a lessee who is a natural
44 person and who takes under the lease primarily for a personal, family,
45 or household purpose.

46 (f) "Fault" means wrongful act, omission, breach, or default.

- 1 (g) "Finance lease" means a lease with respect to which:
- 2 (i) the lessor does not select, manufacture, or supply the goods;
- 3 (ii) the lessor acquires the goods or the right to possession and use
- 4 of the goods in connection with the lease; and
- 5 (iii) one of the following occurs:
- 6 (A) the lessee receives a copy of the contract by which the lessor
- 7 acquired the goods or the right to possession and use of the goods
- 8 before signing the lease contract;
- 9 (B) the lessee's approval of the contract by which the lessor
- 10 acquired the goods or the right to possession and use of the goods is
- 11 a condition to effectiveness of the lease contract;
- 12 (C) the lessee, before signing the lease contract, receives an
- 13 accurate and complete statement designating the promises and
- 14 warranties, and any disclaimers of warranties, limitations or
- 15 modifications of remedies, or liquidated damages, including those of
- 16 a third party, such as the manufacturer of the goods, provided to the
- 17 lessor by the person supplying the goods in connection with or as part
- 18 of the contract by which the lessor acquired the goods or the right to
- 19 possession and use of the goods; or
- 20 (D) if the lease is not a consumer lease, the lessor, before the
- 21 lessee signs the lease contract, informs the lessee in writing (a) of the
- 22 identity of the person supplying the goods to the lessor, unless the
- 23 lessee has selected that person and directed the lessor to acquire the
- 24 goods or the right to possession and use of the goods from that
- 25 person, (b) that the lessee is entitled under this chapter to the promises
- 26 and warranties, including those of any third party, provided to the
- 27 lessor by the person supplying the goods in connection with or as part
- 28 of the contract by which the lessor acquired the goods or the right to
- 29 possession and use of the goods, and (c) that the lessee may
- 30 communicate with the person supplying the goods to the lessor and
- 31 receive an accurate and complete statement of those promises and
- 32 warranties, including any disclaimers and limitations of them or of
- 33 remedies.
- 34 (h) "Goods" means all things that are movable at the time of
- 35 identification to the lease contract, or are fixtures (12A:2A-309), but
- 36 the term does not include money, documents, instruments, accounts,
- 37 chattel paper, general intangibles, or minerals or the like, including oil
- 38 and gas, before extraction. The term also includes the unborn young
- 39 of animals.
- 40 (i) "Installment lease contract" means a lease contract that
- 41 authorizes or requires the delivery of goods in separate lots to be
- 42 separately accepted, even though the lease contract contains a clause
- 43 "each delivery is a separate lease" or its equivalent.
- 44 (j) "Lease" means a transfer of the right to possession and use of
- 45 goods for a term in return for consideration, but a sale, including a sale
- 46 on approval or a sale or return, or retention or creation of a security

1 interest is not a lease. Unless the context clearly indicates otherwise,
2 the term includes a sublease.

3 (k) "Lease agreement" means the bargain, with respect to the lease,
4 of the lessor and the lessee in fact as found in their language or by
5 implication from other circumstances including course of dealing or
6 usage of trade or course of performance as provided in this chapter.
7 Unless the context clearly indicates otherwise, the term includes a
8 sublease agreement.

9 (l) "Lease contract" means the total legal obligation that results
10 from the lease agreement as affected by this chapter and any other
11 applicable rules of law. Unless the context clearly indicates otherwise,
12 the term includes a sublease contract.

13 (m) "Leasehold interest" means the interest of the lessor or the
14 lessee under a lease contract.

15 (n) "Lessee" means a person who acquires the right to possession
16 and use of goods under a lease. Unless the context clearly indicates
17 otherwise, the term includes a sublessee.

18 (o) "Lessee in ordinary course of business" means a person who in
19 good faith and without knowledge that the lease to the person is in
20 violation of the ownership rights or security interest or leasehold
21 interest of a third party in the goods leases in ordinary course from a
22 person in the business of selling or leasing goods of that kind but does
23 not include a pawnbroker. "Leasing" may be for cash or by exchange
24 of other property or on secured or unsecured credit and includes
25 receiving goods or documents of title under a pre-existing lease
26 contract but does not include a transfer in bulk or as security for or in
27 total or partial satisfaction of a money debt.

28 (p) "Lessor" means a person who transfers the right to possession
29 and use of goods under a lease. Unless the context clearly indicates
30 otherwise, the term includes a sublessor.

31 (q) "Lessor's residual interest" means the lessor's interest in the
32 goods after expiration, termination, or cancellation of the lease
33 contract.

34 (r) "Lien" means a charge against or interest in goods to secure
35 payment of a debt or performance of an obligation, but the term does
36 not include a security interest.

37 (s) "Lot" means a parcel or a single article that is the subject matter
38 of a separate lease or delivery, whether or not it is sufficient to
39 perform the lease contract.

40 (t) "Merchant lessee" means a lessee that is a merchant with
41 respect to goods of the kind subject to the lease.

42 (u) "Present value" means the amount as of a date certain of one
43 or more sums payable in the future, discounted to the date certain. The
44 discount is determined by the interest rate specified by the parties if
45 the rate was not manifestly unreasonable at the time the transaction
46 was entered into; otherwise, the discount is determined by a

- 1 commercially reasonable rate that takes into account the facts and
2 circumstances of each case at the time the transaction was entered
3 into.
- 4 (v) "Purchase" includes taking by sale, lease, mortgage, security
5 interest, pledge, gift, or any other voluntary transaction creating an
6 interest in goods.
- 7 (w) "Sublease" means a lease of goods the right to possession and
8 use of which was acquired by the lessor as a lessee under an existing
9 lease.
- 10 (x) "Supplier" means a person from whom a lessor buys or leases
11 goods to be leased under a finance lease.
- 12 (y) "Supply contract" means a contract under which a lessor buys
13 or leases goods to be leased.
- 14 (z) "Termination" occurs when either party pursuant to a power
15 created by agreement or law puts an end to the lease contract
16 otherwise than for default.
- 17 (2) Other definitions applying to this chapter and the sections in
18 which they appear are:
- 19 "Accessions" [.] 12A:2A-310(1).
20 "Construction mortgage" 12A:2A-309(1)(d).
21 "Encumbrance" 12A:2A-309(1)(e).
22 "Fixtures" 12A:2A-309(1)(a).
23 ["Fixture filing" 12A:2A-309(1)(b).]
24 "Purchase money lease" 12A:2A-309(1)(c).
- 25 (3) The following definitions in other chapters apply to this
26 chapter:
- 27 "Account" 12A:9-106.
28 "Between merchants" 12A:2-104(3).
29 "Buyer" 12A:2-103(1)(a).
30 "Chattel paper" 12A:9-105(1)(b).
31 "Consumer goods" 12A:9-109(1).
32 "Document" 12A:9-105(1)(f).
33 "Entrusting" 12A:2-403(3).
34 "General intangibles" 12A:9-106.
35 "Good faith" 12A:2-103(1)(b).
36 "Instrument" 12A:9-105(1)(i).
37 "Merchant" 12A:2-104(1).
38 "Mortgage" 12A:9-105(1)(j).
39 "Pursuant to commitment" 12A:9-105(1)(k).
40 "Receipt" 12A:2-103(1)(c).
41 "Sale" 12A:2-106(1).
42 "Sale on approval" 12A:2-326.
43 "Sale or return" 12A:2-326.
44 "Seller" 12A:2-103(1)(d).
- 45 (4) In addition chapter 1 contains general definitions and

1 principles of construction and interpretation applicable throughout this
2 chapter.1

3 (cf: N.J.S.12A:2A-103)

4

5 11. N.J.S.12A:2A-309 is amended to read as follows:

6 12A:2A-309. Lessor's and lessee's rights when goods become
7 fixtures.

8 (1) In this section:

9 (a) goods are "fixtures" when they become so related to particular
10 real estate that an interest in them arises under real estate law;

11 (b) [a "fixture filing" is the filing, in the office where a mortgage
12 on the real estate would be filed or recorded, of a financing statement
13 covering goods that are or are to become fixtures and conforming to
14 the requirements of 12A:9-402(5);](Deleted by amendment, P.L. .
15 c. .)

16 (c) a lease is a "purchase money lease" unless the lessee has
17 possession or use of the goods or the right to possession or use of the
18 goods before the lease agreement is enforceable;

19 (d) a mortgage is a "construction mortgage" to the extent it
20 secures an obligation incurred for the construction of an improvement
21 on land including the acquisition cost of the land, if the recorded
22 writing so indicates; and

23 (e) "encumbrance" includes real estate mortgages and other liens
24 on real estate and all other rights in real estate that are not ownership
25 interests.

26 (2) Under this chapter a lease may be of goods that are fixtures or
27 may continue in goods that become fixtures, but no lease exists under
28 this chapter of ordinary building materials incorporated into an
29 improvement on land.

30 (3) This chapter does not prevent creation of a lease of fixtures
31 pursuant to real estate law.

32 (4) The perfected interest of a lessor of fixtures has priority over
33 a conflicting interest of an encumbrancer or owner of the real estate
34 if:

35 (a) the lease is a purchase money lease, the conflicting interest of
36 the encumbrancer or owner arises before the goods become fixtures,
37 the interest of the lessor is perfected [by a fixture filing] before the
38 goods become fixtures or within 10 days thereafter, and the lessee has
39 an interest of record in the real estate or is in possession of the real
40 estate; or

41 (b) the interest of the lessor is perfected [by a fixture filing] before
42 the interest of the encumbrancer or owner is of record, the lessor's
43 interest has priority over any conflicting interest of a predecessor in
44 title of the encumbrancer or owner, and the lessee has an interest of
45 record in the real estate or is in possession of the real estate.

46 (5) The interest of a lessor of fixtures, whether or not perfected,

1 has priority over the conflicting interest of an encumbrancer or owner
2 of the real estate if:

3 (a) the fixtures are readily removable factory or office machines,
4 readily removable equipment that is not primarily used or leased for
5 use in the operation of the real estate, or readily removable
6 replacements of domestic appliances that are goods subject to a
7 consumer lease, and before the goods become fixtures the lease
8 contract is enforceable; or

9 (b) the conflicting interest is a lien on the real estate obtained by
10 legal or equitable proceedings after the lease contract is enforceable;
11 or

12 (c) the encumbrancer or owner has consented in writing to the
13 lease or has disclaimed an interest in the goods as fixtures; or

14 (d) the lessee has a right to remove the goods as against the
15 encumbrancer or owner. If the lessee's right to remove terminates, the
16 priority of the interest of the lessor continues for a reasonable time.

17 (6) Notwithstanding subsection (4)(a) but otherwise subject to
18 subsections (4) and (5), the interest of a lessor of fixtures, including
19 the lessor's residual interest, is subordinate to the conflicting interest
20 of an encumbrancer of the real estate under a construction mortgage
21 recorded before the goods become fixtures if the goods become
22 fixtures before the completion of the construction. To the extent
23 given to refinance a construction mortgage, the conflicting interest of
24 an encumbrancer of the real estate under a mortgage has this priority
25 to the same extent as the encumbrancer of the real estate under the
26 construction mortgage.

27 (7) In cases not within the preceding subsections, priority between
28 the interest of a lessor of fixtures, including the lessor's residual
29 interest, and the conflicting interest of an encumbrancer or owner of
30 the real estate who is not the lessee is determined by the priority rules
31 governing conflicting interests in real estate.

32 (8) If the interest of a lessor of fixtures, including the lessor's
33 residual interest, has priority over all conflicting interests of all owners
34 and encumbrancers of the real estate, the lessor or the lessee may (i)
35 on default, expiration, termination, or cancellation of the lease
36 agreement but subject to the lease agreement and this chapter, or (ii)
37 if necessary to enforce other rights and remedies of the lessor or
38 lessee under this chapter, remove the goods from the real estate, free
39 and clear of all conflicting interests of all owners and encumbrancers
40 of the real estate, but the lessor or lessee shall reimburse any
41 encumbrancer or owner of the real estate who is not the lessee and
42 who has not otherwise agreed for the cost of repair of any physical
43 injury, but not for any diminution in value of the real estate caused by
44 the absence of the goods removed or by any necessity of replacing
45 them. A person entitled to reimbursement may refuse permission to
46 remove until the party seeking removal gives adequate security for the

1 performance of this obligation.

2 (9) Even though the lease agreement does not create a security
3 interest, the interest of a lessor of fixtures, including the lessor's
4 residual interest, is perfected by filing a financing statement [as a
5 fixture filing] for leased goods that are or are to become fixtures in
6 accordance with the relevant provisions of the chapter on Secured
7 Transactions (chapter 9).

8 (cf: N.J.S.12A:2A-309)

9

10 12. This act shall take effect on July 1, 1996.

11

12

13

STATEMENT

14

15 Under chapter 9 of Title 12A of the New Jersey Statutes, a secured
16 party is required to file a financing statement to perfect its security
17 interest in collateral. Senate, No. 607, as amended, would reform the
18 current filing system in New Jersey by establishing a centralized
19 State-wide filing system in the Office of the Secretary of State.

20 This centralized system would, in addition, make "fixture filings"
21 unnecessary. Any person conducting a search with respect to financial
22 filings covering fixtures would be able to find these through the
23 centralized system and would at the same time know that this search
24 covers all such filings.

25 This bill requires the Secretary of State to maintain records of filed
26 financial statements and of indexes to them and, to the extent feasible,
27 to establish a system that will allow the public remote access to
28 records and indexes. The Secretary of State is permitted to charge a
29 reasonable fee for such services.

30 Under the bill, a mortgage which meets the requirements set forth
31 in the bill is effective as a financing statement for goods which are or
32 are to become fixtures and the mortgage remains effective as a filed
33 financing statement until the mortgage is released or satisfied of record
34 or its effectiveness otherwise terminates as to the real estate.

35 The bill provides that each county may establish a system to provide
36 the public remote access to the records of filed financing statements
37 and of indexes to them established and maintained by the Secretary of
38 State under this bill and may charge a reasonable fee for use of the
39 remote access system.

40 Finally, the bill provides for the transition to this new system of
41 filing and for the abolition of the fixture filing rule.

42

43

44

45

46 Reforms filing system for perfecting security interests.