
OLR Bill Analysis

sHB 6274

AN ACT CONCERNING AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNING SECURED TRANSACTIONS.

SUMMARY:

This bill makes changes in Article 9 of the Uniform Commercial Code (UCC). Article 9 deals with a creditor's contractual lien interest in a debtor's personal property that secures payment or other performance by the debtor, as well as sales of accounts, chattel paper, payment intangibles, promissory notes, and similar transactions. Among other things, Article 9 sets out requirements for (1) the creditor's interest (a "security interest") to attach to the debtor's property and become enforceable and (2) perfecting a security interest which allows the secured party's interest to have priority over other parties, such as a creditor who gets a judicial lien, bankruptcy trustee, and others who later take a security interest in the collateral. Depending on the type of collateral, a security interest is perfected (1) when a secured party files a financing statement in the appropriate office, (2) when a secured party takes possession or control of the collateral, or (3) automatically on attachment for certain specified collateral items.

The bill:

1. changes definitions and adds a definition of "public organic record," which it uses in relation to organizations;
2. expands the types of systems that a secured party can use to have control of electronic chattel paper and, thus, perfect a security interest in it;
3. for a debtor that moves to another jurisdiction, clarifies and makes more uniform the rules that (a) perfect a security interest

in property acquired after the move, if the financing statement would have perfected such an interest had the debtor not moved and (b) requires the secured party to continue perfection by filing in the new jurisdiction within four months;

4. for a new debtor in another jurisdiction who becomes bound by an original debtor's security agreement (such as through a merger), (a) reduces, from one year to four months, the time that a security interest perfected against the original debtor remains perfected against the new debtor without filing in the new jurisdiction and (b) continues perfection of a security interest for four months in collateral owned by the new debtor before becoming bound as the new debtor and after-acquired collateral if the financing statement would have done so for collateral acquired by the original debtor;
5. changes how a debtor's name is recorded on a financing statement, including specifying what is recorded for an individual's name;
6. changes the name of a "correction statement" that a debtor can file claiming that a financing statement against him or her was unauthorized to an "information statement" and also allows secured parties to file these statements when they believe a record was filed by someone not entitled to do so;
7. sets transition rules to allow secured parties to continue the enforceability of their security interests when the bill's changes take effect; and
8. makes minor and technical changes.

Except as described below, the bill applies to transactions and liens that fall within its scope, even if created or entered into before July 1, 2013. The bill does not affect an action, case, or proceeding that began before July 1, 2013.

EFFECTIVE DATE: July 1, 2013

§ 1—DEFINITIONS

Authenticate

Under current law, authenticate means to (1) sign or (2) execute or adopt a symbol, encrypt, or process a record with intent to identify the person and adopt or accept a record. In lieu of the second part of the definition, the bill requires attaching or logically associating an electronic sound, symbol, or process with a record intending to adopt or accept it.

Certificate of Title

The bill allows a certificate of title to be in a record, if the record is maintained as an alternative to a certificate of title by the issuing government unit when a statute permits indicating the security interest on the record. By law, a record is information inscribed on a tangible medium or stored in an electronic or other medium that can be retrieved in a perceivable form.

Organizations and Public Organic Records

Under current law, a “registered organization” is one organized solely under state or federal law for which the state or federal government must maintain a public record. The bill instead defines it as an organization formed or organized under state or federal law by (1) filing a public organic record with a state or the federal government, (2) a state or the federal government issuing a public organic record, or (3) state or federal legislation. The bill specifies that this includes a business trust formed or organized under a state law requiring that organic records be filed with the state.

The bill defines a “public organic record” as a record available for public inspection that is:

1. initially filed with or issued by a state or the federal government to form or organize an organization and any filed or issued record that amends or restates it or
2. a business trust’s organic record initially filed with a state and any filed record that amends or restates it, if a state statute on

business trusts requires filing.

It also includes state or federal legislation to form or organize an organization, records amending the legislation, and records filed with or issued by a state or the U.S. to amend or restate the organization's name.

§ 2—ELECTRONIC CHATTEL PAPER

Chattel paper is a writing with a monetary obligation and security interest in specific goods or a lease of them (such as when a customer buys goods and signs a note that gives the dealer an interest in the goods to secure payment of the purchase price).

A security interest in electronic chattel paper can be perfected by control. In addition to a system that meets the requirements for control in current law, the bill allows a secured party to establish control if a system is employed for evidencing the transfer of interests in the chattel paper that reliably establishes the secured party as the person to whom the chattel paper was assigned.

One of the six specifications to establish control under current law is that copies or changes that add or change an identified assignee of the electronic chattel paper's authoritative copy can only be made with the secured party's participation. The bill instead requires the secured party's consent.

§ 3—DEBTOR'S LOCATION

By law, a registered organization organized under federal law or a bank branch or agency not organized under state or federal law can designate its state of location if federal law allows it to do so. The bill specifies that this applies if the federal law allows designating a main, home, or comparable office.

§§ 5 AND 7—COLLATERAL ACQUIRED BY A RE-LOCATED DEBTOR OR A NEW DEBTOR

Debtor Relocation

By law, a perfected security interest in collateral remains perfected for four months after a debtor relocates to another jurisdiction and a

secured party can continue perfection by filing in the new jurisdiction within the four-month period. Under current law, if the financing statement provides for it, the creditor has a security interest in collateral acquired after the debtor relocates but it is not perfected. The bill:

1. perfects for four months a security interest in after-acquired collateral that would have been covered by the statement if not for the relocation and
2. requires the secured party to perfect the security interest in the new jurisdiction before the four-month period expires and before the financing statement from the old jurisdiction becomes ineffective in order for the security interests to remain perfected.

New Debtor in Another Jurisdiction

By law, a new debtor in another jurisdiction can become bound by an original debtor's security agreement (such as through a merger). Under current law, a security interest in the original debtor's collateral remains perfected against the new debtor for one year and the secured party can file to continue perfection in the new jurisdiction.

The bill reduces, from one year to four months, the period that perfection continues without filing. But it also perfects a security interest for four months in collateral owned by the new debtor before becoming bound as the new debtor and after-acquired collateral. Under the bill, this security interest is perfected if the financing statement (1) names the original debtor, (2) is filed under the law of the appropriate jurisdiction, and (3) would have perfected a security interest in the collateral if it were acquired by the original debtor. Under the bill,

1. for the security interests to remain perfected, the secured party must perfect the security interest before the four-month period expires and before the financing statement from the old jurisdiction becomes ineffective;
2. if the secured party does not act to retain perfection, the security

interest becomes unperfected and is deemed to have never been perfected as against a purchaser of the collateral for value; and

3. the perfected security interest in the new debtor's collateral under these provisions is subordinate to a security interest in the same collateral that is perfected by other means.

§ 6—COLLATERAL NOT SUSCEPTIBLE TO POSSESSION

Under current law, a buyer (who is not a secured party) of (1) accounts, (2) electronic chattel paper, (3) electronic documents, (4) general intangibles, or (5) investment property other than a certificated security, takes free of a security interest if he or she gives value without knowledge of the security interest and before it is perfected. The bill expands this provision to cover any collateral except tangible chattel paper, tangible documents, goods, instruments, or certificated securities. Thus, the rule applies to all types of intangible collateral that are not susceptible to possession.

§§ 8-9—ASSIGNMENTS

For accounts, chattel paper, payment intangibles, and promissory notes, the law makes a term restricting assignments in an agreement between an account debtor and an assignor or in a promissory note generally ineffective. Under current law, an exception to this rule is the sale of a payment intangible or promissory note. Under the bill, the exception applies to the sale of a payment intangible or promissory note but not when the sale is (1) under a disposition of collateral after default or (2) on acceptance of collateral in full or partial satisfaction of obligation.

Under current law, terms restricting the assignment of a general intangible, health care insurance receivable, or promissory note whether in the promissory note or the agreement between an account debtor and debtor are generally ineffective. Under current law, this restriction applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note. Under the bill, it applies to a security interest that arises out of a sale other than a sale (1) under a

disposition of collateral after default or (2) on acceptance of collateral in full or partial satisfaction of obligation.

§ 10—IDENTIFYING THE DEBTOR

Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. The bill instead requires the financing statement to include the registered organization's name stated on the public organic record most recently filed with or issued or enacted by the jurisdiction where the organization is organized which purports to state, amend, or restate the name. The bill also applies this rule to a registered organization that holds collateral in trust. The rule is different for collateral otherwise held in trust (see below).

Under current law, if the debtor is a decedent's estate, the financing statement must provide the decedent's name and indicate that the debtor is an estate. Instead, under the bill, when collateral is administered by a personal representative of a decedent the financing statement must (1) provide the decedent's name as the debtor's name and (2) indicate in a separate part of the financing statement that the collateral is administered by a personal representative. Under the bill, the decedent's name indicated on the order appointing the personal representative issued by a court with jurisdiction over the collateral is sufficient as the decedent's name.

When the debtor is a trust or trustee acting regarding property in trust, current law requires the financing statement to (1) provide the name for the trust in its organic record or, if no name is specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors and (2) indicate in the debtor's name or otherwise that the debtor is a trust or trustee acting for trust property. The bill limits this rule to collateral held in a trust that is not a registered organization. It also requires the additional information to distinguish the trust and the indication that the collateral is held in trust be in a separate part of the financing statement. It also specifies that a trust without a name can list the

settlor's or testator's name which it defines as (1) the name indicated in the trust's organic record or (2) when the settlor is a registered organization, the settlor's name on the public organic record most recently filed with or issued or enacted by the jurisdiction of organization which purports to state, amend, or restate the settlor's name.

In other cases where the debtor has a name, current law requires the financing statement to provide the debtor's individual or organizational name. When the debtor is an individual, the bill instead requires the financing statement to provide the (1) debtor's individual name, (2) debtor's surname and first name, or (3) name as it appears on his or her unexpired Connecticut driver's license or identity card. If more than one Connecticut driver's license or identity card has been issued to the individual, the most recent one applies.

In other cases where the debtor does not have a name, the law requires the financing statement to include the name of partners, members, associates, or others comprising the debtor. The bill specifies that the names be provided in a manner so that each name would be sufficient if the person named was the debtor.

§ 11—CHANGE IN DEBTOR'S NAME

Under current law, if a debtor changes his or her name so that a filed financing statement becomes seriously misleading, it is effective to perfect a security interest in collateral acquired by the debtor before and for four months after the change. The bill broadens this provision to cover any situation where a name becomes insufficient to meet the requirements for a proper name for a debtor (as described above in § 10) so that the financing statement is seriously misleading. The law, unchanged by the bill, requires that the financing statement be amended to preserve its effectiveness after the four month period.

§ 12—TRANSMITTING UTILITIES

Under current law, if a financing statement indicates the debtor is a transmitting utility, it is effective until a termination statement is filed. The bill limits this rule to initial financing statements that indicate the

debtor is a transmitting utility. Thus, if a transmitting utility is not listed as the debtor on the initial statement but included on all others, the other statements are effective for five years after the date they are filed.

§ 13—REFUSING FILINGS REGARDING ORGANIZATIONS

The bill eliminates the filing office's ability to refuse an initial financing statement or amendment that names an organization as a debtor when it was not previously named because the document does not state the type of organization or its jurisdiction. As under current law, the filing office can reject the filing if it does not provide the debtor's mailing address and indicate whether the debtor's name is an individual's or organization's name.

§§ 14-16—INFORMATION STATEMENTS

The bill renames correction statements as information statements. Under current law, a person can file one of these statements regarding a record indexed under the person's name if he or she believes the record is inaccurate or wrongfully filed.

The bill also allows a person to file an information statement if he or she is a secured party of record on a financing statement and believes a related record was filed by someone not entitled to do so. The information statement must:

1. identify the record it relates to by the initial financing statement's file number and, if it relates to a record in a town clerk's office, provide the date and time or book and page numbers on which the initial financing statement was filed;
2. indicate it is an information statement; and
3. explain why the person believes the filer was not entitled to file the record.

§ 17—MORTGAGES

The bill makes a change to the affidavit a secured party may record in the office where a mortgage is recorded in order to enable the

secured party to enforce a mortgage non-judicially. (Connecticut law does not allow non-judicial enforcement of mortgages.) Current law requires the affidavit to state that a default has occurred and the secured party is entitled to enforce the mortgage non-judicially. The bill requires the affidavit to state that the default is with respect to an obligation secured by the mortgage.

§§ 18-25—TRANSITION PROVISIONS

Continuing Perfection of Security Interests (§§ 19-20)

Under the bill, a security interest that is perfected immediately before July 1, 2013 continues to be perfected under the bill if on July 1, 2013 the bill's requirements for attachment and perfection are met. If a security interest is technically rendered unperfected on July 1, 2013, the security interest remains perfected only if the bill's perfection requirements are satisfied by July 1, 2014.

Under the bill, a security interest that is unperfected before July 1, 2013 will become perfected (1) on July 1, 2013, if the bill's perfection requirements are met before or on that date or (2) at any date after July 1, 2013, when the bill's perfection requirements are met.

Continuing Perfection by Filing (§ 21)

By law, depending on the type of collateral, a security interest is perfected by filing a financing statement in the secretary of the state's office or the town clerk's office. By law, a financing statement is generally valid for five years and a secured party must file a continuation statement to continue perfection of a security interest.

Under the bill, a financing statement filed before July 1, 2013 is effective to perfect a security interest if it satisfies the bill's requirements for perfection. A financing statement filed before July 1, 2013 that satisfies the requirements for perfection at that time is no longer effective:

1. if filed in Connecticut, when it would cease to be effective under current law without the bill's provisions (for example, the time for its effectiveness expires) or

2. if filed in another state, (a) when it would cease to be effective under the other state's law or (b) on June 30, 2018 (the bill specifically applies the June 30, 2018 deadline to a financing statement filed against a transmitting utility before July 1, 2013 only to the extent that current law and the bill provide that a jurisdiction other than the one where the financing statement is filed governs perfection).

Under the bill, filing a continuation statement on or after July 1, 2013 does not continue the effectiveness of a financing statement filed before that date except when it is a continuation statement timely filed according to the law of the jurisdiction governing perfection to continue a financing statement filed in the same office before July 1, 2013. In this case, the financing statement remains effective for the period provided by that jurisdiction's law.

A financing statement filed before July 1, 2013 and a continuation statement filed on or after that date are effective only to the extent they satisfy the bill's requirements for an initial financing statement. The bill considers a financing statement indicating that the debtor is a decedent's estate as indicating the collateral is administered by a personal representative as required by the bill. For a financing statement indicating that the debtor is a trust or trustee acting for property held in trust, it is considered as indicating that the collateral is held in trust as required by the bill.

When Filing an Initial Financing Statement Continues Effectiveness (§ 22)

Under the bill, filing an initial financing statement in the appropriate office continues the effectiveness of a financing statement filed before July 1, 2013, if:

1. filing an initial financing statement in that office would be effective to perfect a security interest under the bill;
2. the financing statement filed before July 1, 2013 was filed in an office in another state; and

3. the initial financing statement (a) satisfies the bill's requirements for an initial financing statement; (b) identifies the pre-July 1, 2013 financing statement by its filing office, filing date, and file numbers, if any, and the most recent continuation statement filed; and (c) indicates the pre-July 1, 2013 financing statement remains effective.

Filing such an initial financing statement continues the effectiveness of the pre-July 1, 2013 financing statement for the same period usually granted to an initial financing statement. The bill makes a conforming change regarding debtors who are transmitting utilities.

Changes to Pre-July 1, 2013 Financing Statement (§ 23)

Under the bill, after July 1, 2013, a person can only add or delete collateral or continue, terminate, or amend a financing statement filed before that date under the law of the jurisdiction governing perfection. The effectiveness of such a statement may also be terminated under the law of the jurisdiction where it is filed.

If Connecticut law governs perfection, the bill allows the information in the pre-July 1, 2013 financing statement to be amended after that date only if:

1. the pre-July 1, 2013 financing statement and amendment are filed in the appropriate office;
2. an amendment is filed in the appropriate office with or after filing an initial financing statement in that office that continues the effectiveness of a pre-July 1, 2013 financing statement (as described above in § 22); or
3. an initial financing statement is filed in the appropriate office, provides the amended information, and satisfies the requirements for an initial financing statement that continues the effectiveness of a pre-July 1, 2013 financing statement.

If Connecticut law governs perfection, the effectiveness of a pre-July 1, 2013 financing statement can only be continued according to the

bill's transition provisions. Regardless of whether Connecticut law governs perfection, a pre-July 1, 2013 financing statement filed in Connecticut can be terminated after July 1, 2013 by filing a termination statement in the office where the financing statement is filed unless an initial financing statement has been filed under the transition provisions (see § 22) to continue the effectiveness of the financing statement.

Who Can File (§ 24)

The bill allows someone to file an initial financing statement or continuation statement under the transition provisions if (1) the secured party of record authorizes it and (2) the filing is necessary under the transition provisions to (a) continue the effectiveness of a financing statement filed before July 1, 2013 or (b) perfect or continue perfection.

Priority (§ 25)

The bill determines the priority of conflicting claims to collateral, but allows current law to set priority if the relative priorities of claims were set before July 1, 2013.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 41 Nay 0 (03/30/2011)