

MEMORANDUM

TO: Joint Review Committee on UCC Article 9

FROM: Steven L. Harris, Reporter

RE: Draft Amendments to Article 9

DATE: April 1, 2010

I have attached three documents for discussion on a teleconference scheduled for Monday, April 5, at 2:00 p.m. Eastern Daylight Time. These documents reflect the deliberations of the Joint Review Committee at its most recent meeting.

Appendix A contains the draft amendments to the Official Text together with the proposed modifications to the Official Comments that relate to the amendments. The sections are presented in numerical order. Please note that additional Official Comments will be needed to explain some of the amendments.

Appendix B contains proposed modifications to the Official Comments that are not accompanied by amendments to the Official Text.

Appendix C has the same content as Appendix A; however, like the drafts prepared for committee meetings, the organization of the provisions is topical.

Among the issues that the Joint Review Committee may wish to address in the teleconference are the following:

1. Should § 9-316(h)(3) and (i)(3) be retained? The first subsection would protect buyers, lessees, and licensees against a security interest in property acquired after the debtor has relocated when a financing statement was filed only in the debtor's "old" jurisdiction. The second subsection would protect these purchasers against a security interest in property acquired by a new debtor located in one jurisdiction when perfection was achieved by filing against the original debtor in the a different jurisdiction.

2. A question has arisen whether the sufficiency of "additional information . . . to distinguish the trust from other trusts having one or more of the same settlors" (§ 9-503(a)) is to be tested with respect to other trusts actually settled by the same settlor or with respect to other trusts that hypothetically might be settled by the same settlor. For example, is any additional information required if the settlor settles only one trust and the financing statement includes the required indication that the debtor is a trust or is a trustee acting with respect to property held in a trust?

S. L. H.

APPENDIX A

Amendments to Uniform Commercial Code Article 9
and Modifications to Comments Relating to the Amendments

Interim Draft of April 1, 2010

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1 APPENDIX A

2 Amendments to Uniform Commercial Code Article 9
3 and Modifications to Comments Relating to the Amendments
4 (Sections appear in numerical order)

5 Interim Draft of April 1, 2010

6 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

7 (a) [Article 9 definitions.] In this article:

8 * * *

9 (7) “Authenticate” means:

10 (A) to sign; or

11 ~~(B) to execute or otherwise adopt a symbol, or encrypt or similarly~~

12 ~~process a record in whole or in part, with the present intent of the authenticating person to~~
13 ~~identify the person and adopt or accept a record~~ with present intent to adopt or accept a record, to
14 attach to or logically associate with the record an electronic sound, symbol, or process.

15 * * *

16 (10) “Certificate of title” means a certificate of title with respect to which a
17 statute provides for the security interest in question to be indicated on the certificate as a
18 condition or result of the security interest’s obtaining priority over the rights of a lien creditor
19 with respect to the collateral. The term includes another record maintained as an alternative to a
20 certificate of title by the governmental unit that issues certificates of title if a statute permits the
21 security interest in question to be indicated on the record as a condition or result of the security
22 interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

23 * * *

1 (50) “Jurisdiction of organization”, with respect to a registered organization,
2 means the jurisdiction under whose law the organization is formed or organized.

3 * * *

4 (67A) “Public organic record” means:

5 (A) a record or records consisting of the record initially filed with or
6 issued by a State or the United States to form or organize an organization and any record filed
7 with or issued by the State or the United States which effects an amendment or restatement of
8 the initial record, if the record or records are available to the public for inspection;

9 (B) an organic record or records of a business trust consisting of the
10 record initially filed with a State and any record filed with the State which effects an amendment
11 or restatement of the initial record, if a statute of the State governing business trusts requires that
12 the record or records be filed with the State and the record or records are available to the public
13 for inspection; and

14 (C) a record or records consisting of legislation enacted by the legislature
15 of a State or the Congress of the United States which forms or organizes an organization, any
16 record amending the legislation, and any record filed with or issued by the State or United States
17 which states the name of the organization, if the record or records are available to the public for
18 inspection.

19 * * *

20 (70) “Registered organization” means an organization formed or organized solely
21 under the law of a single State or the United States and as to which the State or the United States
22 must maintain a public record showing the organization to have been organized by the filing of a
23 public organic record with, the issuance of a public organic record by, or the enactment of

1 legislation by the State or United States. The term includes a business trust that is formed or
2 organized under the law of a single State if a statute of the State governing business trusts
3 requires that the business trust’s organic record be filed with the State.

4 * * *

5 **Official Comment**

6 * * *

7 **11. Choice-of-Law-Related Definitions: “Certificate of Title”; “Governmental**
8 **Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.”** These new
9 definitions reflect the changes in the law governing perfection and priority of security interests
10 and agricultural liens provided in Part 3, Subpart 1.

11 Statutes often require applicants for a certificate of title to identify all security interests
12 on the application and require the issuing agency to indicate the identified security interests on
13 the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e.,
14 perfection of a security interest) in goods covered by the certificate occurs upon indication of the
15 security interest on the certificate; that is, they provide for the indication of the security interest
16 on the certificate as a “condition” of perfection. Other statutes contemplate that perfection is
17 achieved upon the occurrence of another act, e.g., delivery of the application to the issuing
18 agency, that “results” in the indication of the security interest on the certificate. A certificate
19 governed by either type of statute can qualify as a “certificate of title” under this Article. The
20 statute need not expressly state the connection between the indication and perfection. For
21 example, a certificate issued pursuant to a statute that requires applications to identify security
22 interests, requires the issuing agency to indicate the identified security interests on the
23 certificate, but is silent concerning the legal consequences of the indication would be a
24 “certificate of title” if, under a judicial interpretation of the statute, perfection of a security
25 interest is a legal consequence of the indication.

26 The first sentence of the definition of “certificate of title” includes certificates consisting
27 of tangible records, of electronic records, and of combinations of tangible and electronic records.

28 In many States, a certificate of title covering goods that are encumbered by a security
29 interest is delivered to the secured party by the issuing authority. To eliminate the need for the
30 issuance of a paper certificate under these circumstances, several States have revised their
31 certificate-of-title statutes to permit or require a State agency to maintain an electronic record
32 that evidences ownership of the goods and in which a security interest in the goods may be
33 noted. The second sentence of the definition provides that such a record is a “certificate of title”
34 if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless
35 of whether the certificate-of-title statute provides that the record is a certificate of title and even

1 if the statute does not expressly state that the record is maintained instead of issuing a paper
2 certificate.

3 * * *

4 **SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**

5 **(a) [General rule: control of electronic chattel paper.]** A secured party has control of
6 electronic chattel paper if a system employed for evidencing the transfer of interests in the
7 chattel paper reliably establishes the secured party as the person to which the chattel paper was
8 assigned.

9 **(b) [Specific facts giving control.]** A system satisfies subsection (a), and a secured
10 party has control of electronic chattel paper, if the record or records comprising the chattel paper
11 are created, stored, and assigned in such a manner that:

12 (1) a single authoritative copy of the record or records exists which is unique,
13 identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

14 (2) the authoritative copy identifies the secured party as the assignee of the record
15 or records;

16 (3) the authoritative copy is communicated to and maintained by the secured
17 party or its designated custodian;

18 (4) copies or ~~revisions~~ amendments that add or change an identified assignee of
19 the authoritative copy can be made only with the ~~participation~~ consent of the secured party;

20 (5) each copy of the authoritative copy and any copy of a copy is readily
21 identifiable as a copy that is not the authoritative copy; and

22 (6) any ~~revision~~ amendment of the authoritative copy is readily identifiable as an
23 authorized or unauthorized ~~revision~~.

1 **Official Comment**

2 * * *

3 2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in
4 “electronic chattel paper,” a new term defined in Section 9-102. This section governs how
5 “control” of electronic chattel paper may be obtained. Subsection (a), which derives from
6 Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control.
7 Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general
8 test in subsection (a).

9 A secured party’s control of electronic chattel paper (i) may substitute for an
10 authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a
11 method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-
12 temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred,
13 assigned, or possessed in the same manner as tangible chattel paper, a special definition of
14 control is necessary. In descriptive terms, this section provides that control of electronic chattel
15 paper is the functional equivalent of possession of “tangible chattel paper” (a term also defined
16 in Section 9-102).

17 3. **Development of Control Systems.** This Article leaves to the marketplace the
18 development of systems and procedures, through a combination of suitable technologies and
19 business practices, for dealing with control of electronic chattel paper in a commercial context.
20 Systems that evolve for control of electronic chattel paper may or may not involve a third party
21 custodian of the relevant records. As under UETA, a system must be shown to reliably establish
22 that the secured party is the assignee of the chattel paper. Reliability is a high standard and
23 encompasses the general principles of uniqueness, identifiability, and unalterability found in
24 subsection (b) without setting forth strict guidelines as to how these principles must be achieved.
25 However, the standards applied to determine whether a party is in control of electronic chattel
26 paper should not be more stringent than the standards now applied to determine whether a party
27 is in possession of tangible chattel paper. For example, just as a secured party does not lose
28 possession of tangible chattel paper merely by virtue of the possibility that a person acting on its
29 behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel
30 paper would not be defeated by the possibility that the secured party’s interest could be
31 subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

32 This section and the concept of control of electronic chattel paper are not based on the
33 same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of
34 investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for
35 control of that collateral are based on existing market practices and legal and regulatory regimes
36 for institutions such as banks and securities intermediaries. Analogous practices for electronic
37 chattel paper are developing nonetheless. The flexible approach adopted by this section,
38 moreover, should not impede the development of these practices and, eventually, legal and
39 regulatory regimes, which may become analogous to those for, e.g., investment property.

1 34. **“Authoritative Copy” of Electronic Chattel Paper.** One requirement for
2 establishing control under subsection (b) is that a particular copy be an “authoritative copy.”
3 Although other copies may exist, they must be distinguished from the authoritative copy. This
4 may be achieved, for example, through the methods of authentication that are used or by
5 business practices involving the marking of any additional copies. When tangible chattel paper
6 is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel
7 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no
8 longer exists or has been permanently marked to indicate that it is not the authoritative copy.

9 4. ~~**Development of Control Systems.**~~ This Article leaves to the marketplace the
10 development of systems and procedures, through a combination of suitable technologies and
11 business practices, for dealing with control of electronic chattel paper in a commercial context.
12 However, achieving control under this section requires more than the agreement of interested
13 persons that the elements of control are satisfied. For example, paragraph (4) contemplates that
14 control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to
15 approach practical impossibility) to add or change an identified assignee without the
16 participation of the secured party (or its authorized representative). It would not be enough for
17 the assignor merely to agree that it will not change the identified assignee without the assignee=
18 secured party’s consent. However, the standards applied to determine whether a party is in
19 control of electronic chattel paper should not be more stringent than the standards now applied to
20 determine whether a party is in possession of tangible chattel paper. Control of electronic chattel
21 paper contemplates systems or procedures such that the secured party must take some action
22 (either directly or through its designated custodian) to effect a change or addition to the
23 authoritative copy. But just as a secured party does not lose possession of tangible chattel paper
24 merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver
25 the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the
26 possibility that the secured party’s interest *could* be subverted by the wrongful conduct of a
27 person (such as a custodian) acting on its behalf.

28 Systems that evolve for control of electronic chattel paper may or may not involve a third
29 party custodian of the relevant records. However, this section and the concept of control of
30 electronic chattel paper are not based on the same concepts as are control of deposit accounts
31 (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter=
32 of-credit rights (Section 9-107). The rules for control of that collateral are based on existing
33 market practices and legal and regulatory regimes for institutions such as banks and securities
34 intermediaries. Analogous practices for electronic chattel paper are developing nonetheless.
35 The flexible approach adopted by this section, moreover, should not impede the development of
36 these practices and, eventually, legal and regulatory regimes, which may become analogous to
37 those for, e.g., investment property.

38 **SECTION 9-307. LOCATION OF DEBTOR.**

39 * * *

1 (f) [Location of registered organization organized under federal law; bank
2 branches and agencies.] Except as otherwise provided in subsection (i), a registered
3 organization that is organized under the law of the United States and a branch or agency of a
4 bank that is not organized under the law of the United States or a State are located:

5 (1) in the State that the law of the United States designates, if the law designates a
6 State of location;

7 (2) in the State that the registered organization, branch, or agency designates, if
8 the law of the United States authorizes the registered organization, branch, or agency to
9 designate its State of location, including by designating its main office, home office, or other
10 comparable office; or

11 (3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

12 * * *

13 Official Comment

14 5. **Registered Organizations Organized Under Law of United States; Branches and**
15 **Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the
16 location of a debtor that is a registered organization organized under the law of the United States.
17 It defers to the law of the United States, to the extent that that law determines, or authorizes the
18 debtor to determine, the debtor's location. Thus, if the law of the United States designates a
19 particular State as the debtor's location, that State is the debtor's location for purposes of this
20 Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered
21 organization to designate its State of location, the State that the registered organization
22 designates is the State in which it is located for purposes of this Article's choice-of-law rules. In
23 other cases, the debtor is located in the District of Columbia.

24 In some cases, the law of the United States authorizes the registered organization to
25 designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections
26 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the
27 designation of the State of location for purposes of Section 9-307 (f)(2).

28 Subsection (f) also specifies the location of a branch or agency in the United States of a
29 foreign bank that has one or more branches or agencies in the United States. The law of the
30 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency)

1 to designate a single home state for all of the foreign bank's branches and agencies in the United
2 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the
3 designation constitutes the State of location for the branch or agency for purposes of Section 9-
4 307(f), unless all of a foreign bank's branches or agencies that are in the United States are
5 licensed in only one State, in which case the branches and agencies are located in that State. See
6 subsection (i).

7 In cases not governed by subsection (f) or (i), the location of a foreign bank is determined
8 by subsections (b) and (c).

9 **SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY**
10 **SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

11 (a) [Security interest subject to other law.] Except as otherwise provided in
12 subsection (d), the filing of a financing statement is not necessary or effective to perfect a
13 security interest in property subject to:

14 (1) a statute, regulation, or treaty of the United States whose requirements for a
15 security interest's obtaining priority over the rights of a lien creditor with respect to the property
16 preempt Section 9-310(a);

17 (2) [list any ~~certificate-of-title~~ statute covering automobiles, trailers, mobile
18 homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on
19 ~~the a certificate of title~~ as a condition or result of perfection, and any non-Uniform Commercial
20 Code central filing statute]; or

21 (3) a ~~certificate-of-title~~ statute of another jurisdiction which provides for a
22 security interest to be indicated on ~~the a certificate of title~~ as a condition or result of the security
23 interest's obtaining priority over the rights of a lien creditor with respect to the property.

24 * * *

1 **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**
2 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

3 * * *

4 (h) [Effect on filed financing statement of change in governing law.] The following
5 rules apply to a security interest that attaches within four months after the debtor changes its
6 location to another jurisdiction:

7 (1) [Subject to paragraph (3), a] [A] financing statement filed before the change
8 pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to
9 perfect a security interest in the collateral if the financing statement would have been effective to
10 perfect a security interest in the collateral if the debtor had not changed its location.

11 (2) [Subject to paragraph (3), if] [If] a security interest that is perfected by a
12 financing statement that is effective under paragraph (1) becomes perfected under the law of the
13 other jurisdiction before the earlier of the time the financing statement would have become
14 ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the
15 expiration of the four-month period, it remains perfected thereafter. If the security interest does
16 not become perfected under the law of the other jurisdiction before the earlier time or event, it
17 becomes unperfected and is deemed never to have been perfected as against a purchaser of the
18 collateral for value.

19 [(3) A security interest that is perfected solely by a financing statement that is
20 effective solely under paragraph (1) is deemed to be unperfected as against a lessee, licensee, or
21 buyer, other than a secured party, of the collateral until it is perfected under the law of the other
22 jurisdiction.]

1 (i) [Effect of change in governing law on financing statement filed against original
2 **debtor.]** If a financing statement naming an original debtor is filed pursuant to the law of the
3 jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another
4 jurisdiction, the following rules apply:

5 (1) [Subject to paragraph (3), the] [The] financing statement is effective to
6 perfect a security interest in collateral in which the new debtor has or acquires rights before or
7 within four months after the new debtor becomes bound under Section 9-203(d), if the financing
8 statement would have been effective to perfect a security interest in the collateral if it had been
9 acquired by the original debtor.

10 (2) [Subject to paragraph (3), a] [A] security interest that is perfected by the
11 financing statement and which becomes perfected under the law of the other jurisdiction before
12 the earlier of the expiration of the four-month period or the time the financing statement would
13 have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or
14 9-305(c) remains perfected thereafter. A security interest that is perfected by the financing
15 statement but which does not become perfected under the law of the other jurisdiction before the
16 earlier time or event becomes unperfected and is deemed never to have been perfected as against
17 a purchaser of the collateral for value.

18 (3) A security interest that is perfected solely by a financing statement that is
19 effective solely under paragraph (1) is deemed to be unperfected as against a lessee, licensee, or
20 buyer, other than a secured party, of the collateral until it is perfected under the law of the other
21 jurisdiction.]

1 lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all
2 security interests created by the lessor, even if perfected. See Section 9-321.

3 * * *

4 The rule of subsection (b) obviously is not appropriate where the collateral consists of
5 intangibles and there is no representative piece of paper whose physical delivery is the only or
6 the customary method of transfer. Therefore, with respect to such intangibles (including
7 accounts, electronic chattel paper, general intangibles, and investment property other than
8 certificated securities), subsection (d) gives priority to any buyer who gives value without
9 knowledge, and before perfection, of the security interest. A licensee of a general intangible
10 takes free of an unperfected security interest in the general intangible under the same
11 circumstances. Note that a licensee of a general intangible in ordinary course of business takes
12 rights under a nonexclusive license free of security interests created by the licensor, even if
13 perfected. See Section 9-321.

14 * * *

15 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**
16 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

17 (a) **[General priority rules.]** Except as otherwise provided in this section, priority
18 among conflicting security interests and agricultural liens in the same collateral is determined
19 according to the following rules:

20 (1) Conflicting perfected security interests and agricultural liens rank according
21 to priority in time of filing or perfection. Priority dates from the earlier of the time a filing
22 covering the collateral is first made or the security interest or agricultural lien is first perfected, if
23 there is no period thereafter when there is neither filing nor perfection.

24 * * *

25 (b) **[Time of perfection: proceeds and supporting obligations.]** For the purposes of
26 subsection (a)(1):

1 (1) the time of filing or perfection as to a security interest in collateral is also the
2 time of filing or perfection as to a security interest in proceeds; ~~and~~

3 (2) the time of filing or perfection as to a security interest in collateral supported
4 by a supporting obligation is also the time of filing or perfection as to a security interest in the
5 supporting obligation; and

6 (3) the time of filing or perfection as to a security interest in collateral which
7 remains perfected under Section 9-316(i)(2) is the time the security interest becomes perfected
8 under the law of the other jurisdiction.

9 * * *

10 (h) [Limitation on subsection (b)(3).] Subsection (b)(3) does not affect the priority of
11 competing security interests, each of which remains perfected under Section 9-316(i)(2).

12 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW**
13 **DEBTOR.**

14 (a) **[Subordination of security interest created by new debtor.]** Subject to subsection
15 (b), a security interest created by a new debtor which is perfected by a filed financing statement
16 that is effective solely under Section 9-508 or Sections 9-508 and 9-316(i)(1) in collateral in
17 which a new debtor has or acquires rights is subordinate to a security interest in the same
18 collateral which is perfected other than by a filed financing statement that is effective solely
19 under Section 9-508 or Sections 9-508 and 9-316(i)(1).

20 (b) **[Priority under other provisions; multiple original debtors.]** The other provisions
21 of this part determine the priority among conflicting security interests in the same collateral
22 perfected by filed financing statements that are effective solely under Section 9-508 or Sections

1 9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became
2 bound as debtor were not entered into by the same original debtor, the conflicting security
3 interests rank according to priority in time of the new debtor's having become bound.

4 **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF**
5 **ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS**
6 **ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,**
7 **AND PROMISSORY NOTES INEFFECTIVE.**

8 * * *

9 (d) [**Term restricting assignment generally ineffective.**] Except as otherwise provided
10 in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an
11 agreement between an account debtor and an assignor or in a promissory note is ineffective to
12 the extent that it:

13 (1) prohibits, restricts, or requires the consent of the account debtor or person
14 obligated on the promissory note to the assignment or transfer of, or the creation, attachment,
15 perfection, or enforcement of a security interest in, the account, chattel paper, payment
16 intangible, or promissory note; or

17 (2) provides that the assignment or transfer or the creation, attachment,
18 perfection, or enforcement of the security interest may give rise to a default, breach, right of
19 recoupment, claim, defense, termination, right of termination, or remedy under the account,
20 chattel paper, payment intangible, or promissory note.

1 (e) **[Inapplicability of subsection (d) to certain sales.]** Subsection (d) does not apply
2 to the sale, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of
3 collateral under Section 9-620, of a payment intangible or promissory note.

4 * * *

5 **SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**
6 **NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL**
7 **INTANGIBLES INEFFECTIVE.**

8 (a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided
9 in subsection (b), a term in a promissory note or in an agreement between an account debtor and
10 a debtor which relates to a health-care-insurance receivable or a general intangible, including a
11 contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent
12 of the person obligated on the promissory note or the account debtor to, the assignment or
13 transfer of, or creation, attachment, or perfection of a security interest in, the promissory note,
14 health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

15 (1) would impair the creation, attachment, or perfection of a security interest; or

16 (2) provides that the assignment or transfer or the creation, attachment, or
17 perfection of the security interest may give rise to a default, breach, right of recoupment, claim,
18 defense, termination, right of termination, or remedy under the promissory note, health-care-
19 insurance receivable, or general intangible.

20 (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection
21 (a) applies to a security interest in a payment intangible or promissory note only if the security

1 interest arises out of a sale, other than a sale pursuant to a disposition under Section 9-610 or an
2 acceptance of collateral under Section 9-620, of the payment intangible or promissory note.

3 * * *

4 **SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF**
5 **MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING**
6 **STATEMENT.**

7 * * *

8 (c) **[Record of mortgage as financing statement.]** A record of a mortgage is effective,
9 from the date of recording, as a financing statement filed as a fixture filing or as a financing
10 statement covering as-extracted collateral or timber to be cut only if:

11 (1) the record indicates the goods or accounts that it covers;

12 (2) the goods are or are to become fixtures related to the real property described
13 in the record or the collateral is related to the real property described in the record and is as-
14 extracted collateral or timber to be cut;

15 (3) the record satisfies the requirements for a financing statement in this section,
16 except that:

17 (A) it need not indicate ~~other than an indication~~ that it is to be filed in the
18 real property records; and

19 (B) it sufficiently provides the name of a debtor who is an individual if it
20 provides the individual name of the debtor or the surname and first personal name of the debtor,
21 even if the debtor is an individual as to whom Section 9-503(a)(4) applies; and

22 (4) the record is [duly] recorded.

1 * * *

2 ***Legislative Note:*** Only a State that enacts Alternative A of the amendments to Section 9-503
3 should enact the amendments to Section 9-502. As to the bracketed term “driver’s license,” see
4 Legislative Note 3 to Section 9-502.

5 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

6 (a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the
7 name of the debtor:

8 (1) except as otherwise provided in paragraph (3) and subject to subsection (f), if
9 the debtor is a registered organization or the collateral is held in a trust that is a registered
10 organization, only if the financing statement provides the name of the debtor registered
11 organization indicated on the public organic record of filed with or issued or enacted by the
12 debtor’s registered organization’s jurisdiction of organization which shows the debtor to have
13 been organized;

14 (2) subject to subsection (g), if the debtor is a decedent’s estate collateral is being
15 administered by the personal representative of a decedent, only if the financing statement
16 provides, as the name of the debtor, the name of the decedent and, in a separate part of the
17 financing statement, indicates that the debtor is an estate;

18 (3) if the debtor is a trust or a trustee acting with respect to property held in trust,
19 only if the financing statement:

20 (A) provides the name specified for the trust in its organic documents or,
21 if no name is specified, provides the name of the settlor and additional information sufficient to
22 distinguish the debtor from other trusts having one or more of the same settlors; and

1 ~~(B) indicates, in the debtor's name or otherwise, that the debtor is a trust~~
2 ~~or is a trustee acting with respect to property held in trust;~~

3 collateral is held in a trust that is not a registered organization, only if the financing statement:

4 (A) provides, as the name of the debtor:

5 (i) if the organic record of the trust specifies the name of the trust,
6 the name so specified; or

7 (ii) if the organic record of the trust does not specify a name for the
8 trust, the name of the settlor or testator under subsection (h); and

9 (B) in a separate part of the financing statement:

10 (i) if the name is provided in accordance with subparagraph (A)(i),
11 indicates that the collateral is held in a trust; or

12 (ii) if the name is provided in accordance with subparagraph
13 (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having
14 one or more of the same settlors or the same testator and indicates that the collateral is held in a
15 trust, unless the additional information so indicates;

16 **[Subsection (a)(4), (5) & (6)—Alternative A]**

17 (4) subject to subsection (h), if the debtor is an individual to whom this State has
18 issued a [driver's license] that has not expired, only if it provides the name of the individual
19 which is indicated on the [driver's license];

20 (5) if the debtor is an individual as to whom paragraph (4) does not apply, only if
21 it provides the individual name of the debtor or the surname and first personal name of the
22 debtor; and

23 ~~(4)(6)~~ in other cases:

1 (A) if the debtor has a name, only if it provides the ~~individual or~~
2 organizational name of the debtor; and

3 (B) if the debtor does not have a name, only if it provides the names of the
4 partners, members, associates, or other persons comprising the debtor, in a manner such that
5 each name provided would be sufficient if the person named were the debtor.

6 **[Subsection (a)(4) & (5)—Alternative B]**

7 (4) if the debtor is an individual, only if:

8 (A) it provides the individual name of the debtor;

9 (B) it provides the surname and first personal name of the debtor; or

10 (C) subject to subsection (h), it provides the name of the individual which
11 is indicated on a [driver's license] that this State has issued to the individual and which has not
12 expired; and

13 (4~~5~~) in other cases:

14 (A) if the debtor has a name, only if it provides the ~~individual or~~
15 organizational name of the debtor; and

16 (B) if the debtor does not have a name, only if it provides the names of the
17 partners, members, associates, or other persons comprising the debtor, in a manner such that
18 each name provided would be sufficient if the person named were the debtor.

19 **[End of Alternatives]**

20 (f) [Name of registered organization.] For purposes of subsection (a)(1), “the name of
21 the debtor indicated on the public organic record” means the name that is stated to be the
22 debtor’s name on the most recently filed or issued organic public record that purports to state,
23 amend, or restate the debtor’s name.

1 (g) The “name of the settlor or testator” in subsection (a)(3) means:

2 (1) if the settlor is a registered organization, the name of the registered
3 organization indicated on the public organic record filed with or issued or enacted by the
4 registered organization’s jurisdiction of organization; and

5 (2) in other cases, the name of the settlor or testator indicated in the trust’s
6 organic record.

7 **[Subsection (h)—Alternative A]**

8 (h) [Multiple licenses or cards.] If this State has issued to an individual more than one
9 [driver’s license] of a kind described in subsection (a)(4), the one that was issued most recently
10 is the one to which the subparagraph refers.

11 **[Subsection (h)—Alternative B]**

12 (h) [Multiple licenses.] If this State has issued to an individual more than one [driver’s
13 license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the
14 one to which the subsection refers.

15 **[End of Alternatives]**

16 **Legislative Notes:**

17 1. This Act contains two alternative sets of amendments relating to the names of
18 individual debtors. A State should enact the same Alternative, A or B, for both subsections (a)
19 and (g) of Section 9-503. A State that enacts Alternative A of the amendments to this section
20 should also enact the amendments to Section 9-502.

21 2. Both Alternatives refer, in part, to the name as shown on a debtor’s driver’s license.
22 The Legislature should be aware that, in some States, certain characters that may be used by the
23 State’s department of motor vehicles (or similar agency) in the name on a driver’s license may
24 not be accepted by the State’s central or local UCC filing offices under current regulations or
25 internal protocols. This may occur because of technological limitations of the filing offices or
26 merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In
27 these situations, perfection of a security interest granted by a debtor with such a driver’s license

1 may be impossible under Alternative A of the amendments and the utility of Alternative B, under
2 which the name on the driver's license is one of the names that is sufficient, may be reduced.
3 Accordingly, the Legislature may wish to determine if one or more of these issues exist in this
4 State and, if so, to make certain that such issues have been resolved. A successful resolution
5 might be accomplished by statute, agency regulation, or technological change effectuated before
6 or as part of the enactment of this Act.

7 3. Regardless of which Alternative is enacted, in States in which in which a single agency
8 issues driver's licenses and non-driver identification cards as an alternative to a driver's
9 license, such that at any given time an individual may hold either a driver's license or an
10 identification card but not both, the Legislature should replace each use of the term "driver's
11 license" with a phrase meaning "driver's license or identification card" but containing the
12 analogous terms used in the enacting State. In other States, the Legislature should replace the
13 term "driver's license" with the analogous term used in the enacting State.

14 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**
15 **FINANCING STATEMENT.**

16 * * *

17 (c) **[Change in debtor's name.]** If a name of a debtor which is sufficient under Section
18 9-503~~so~~ changes its name such that a filed financing statement becomes seriously misleading
19 under Section 9-506:

20 (1) the financing statement is effective to perfect a security interest in collateral
21 acquired by the debtor before, or within four months after, the change; and

22 (2) the financing statement is not effective to perfect a security interest in
23 collateral acquired by the debtor more than four months after the change, unless an amendment
24 to the financing statement which renders the financing statement not seriously misleading is filed
25 within four months after the change.

1 **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING**
2 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

3 * * *

4 **(b) [Public-finance or manufactured-home transaction.]** Except as otherwise
5 provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a
6 public-finance transaction or manufactured-home transaction is effective for a period of 30 years
7 after the date of filing if it indicates that it is filed in connection with a public-finance transaction
8 or manufactured-home transaction.

9 * * *

10 **(f) [Transmitting utility financing statement.]** If a debtor is a transmitting utility and
11 a filed initial financing statement so indicates, the financing statement is effective until a
12 termination statement is filed.

13 * * *

14 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
15 **FILING.**

16 * * *

17 **(b) [Refusal to accept record; filing does not occur.]** Filing does not occur with
18 respect to a record that a filing office refuses to accept because:

19 * * *

20 (3) the filing office is unable to index the record because:

21 * * *

1 (B) in the case of an amendment or ~~correction~~information statement, the
2 record:

3 (i) does not identify the initial financing statement as required by
4 Section 9-512 or 9-518, as applicable; or

5 (ii) identifies an initial financing statement whose effectiveness
6 has lapsed under Section 9-515;

7 * * *

8 (5) in the case of an initial financing statement or an amendment that provides a
9 name of a debtor which was not previously provided in the financing statement to which the
10 amendment relates, the record does not:

11 (A) provide a mailing address for the debtor; or

12 (B) indicate whether the debtor is an individual or an organization; ~~or~~

13 ~~(C) if the financing statement indicates that the debtor is an organization,~~

14 provide:

15 ~~(i) a type of organization for the debtor;~~

16 ~~(ii) a jurisdiction of organization for the debtor; or~~

17 ~~(iii) an organizational identification number for the debtor or~~

18 indicate that the debtor has none;

19 * * *

20 **SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY**
21 **FILED RECORD.**

22 (a) ~~[Who may file~~ **Statement with respect to record indexed under person's name.**~~]~~

23 A person may file in the filing office a ~~correction~~an information statement with respect to a

1 record indexed there under the person’s name if the person believes that the record is inaccurate
2 or was wrongfully filed.

3 **[Alternative A]**

4 (b) ~~[Sufficiency Contents of correction statement under subsection (a).]~~ ~~A~~
5 ~~correction~~ An information statement under subsection (a) must:

6 (1) identify the record to which it relates by the file number assigned to the initial
7 financing statement to which the record relates;

8 (2) indicate that it is ~~a correction~~ an information statement; and

9 (3) provide the basis for the person’s belief that the record is inaccurate and
10 indicate the manner in which the person believes the record should be amended to cure any
11 inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

12 **[Alternative B]**

13 (b) ~~[Sufficiency Contents of correction statement under subsection (a).]~~ ~~A~~
14 ~~correction~~ An information statement under subsection (a) must:

15 (1) identify the record to which it relates by:

16 (A) the file number assigned to the initial financing statement to which the
17 record relates; and

18 (B) if the ~~correction~~ information statement relates to a record filed [or
19 recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial
20 financing statement was filed [or recorded] and the information specified in Section 9-502(b);

21 (2) indicate that it is ~~a correction~~ an information statement; and

1 (3) provide the basis for the person’s belief that the record is inaccurate and
2 indicate the manner in which the person believes the record should be amended to cure any
3 inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

4 **[End of Alternatives]**

5 **(c) [Statement by secured party of record.]** A person may file in the filing office an
6 information statement with respect to a record filed there if the person is a secured party of
7 record with respect to the financing statement to which the record relates and believes that the
8 person that filed the record was not entitled to do so under Section 9-509(d).

9 **[Subsection (d)—Alternative A]**

10 **(d) [Contents of statement under subsection (c).]** An information statement under
11 subsection (c) must:

12 (1) identify the record to which it relates by the file number assigned to the initial
13 financing statement to which the record relates;

14 (2) indicate that it is an information statement; and

15 (3) provide the basis for the person’s belief that the person that filed the record
16 was not entitled to do so under Section 9-509(d).

17 **[Subsection (d)—Alternative B]**

18 **(d) [Contents of statement under subsection (c).]** An information statement under
19 subsection (c) must:

20 (1) identify the record to which it relates by:

21 (A) the file number assigned to the initial financing statement to which the
22 record relates; and

1 (B) if the statement relates to a record filed [or recorded] in a filing office
2 described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed
3 [or recorded] and the information specified in Section 9-502(b);

4 (2) indicate that it is an information statement; and

5 (3) provide the basis for the person’s belief that the person who filed the record
6 was not entitled to do so under Section 9-509(d).

7 **[End of Alternatives]**

8 ~~(c)~~(e) **[Record not affected by correction-information statement.]** The filing of a
9 ~~correction-~~an information statement does not affect the effectiveness of an initial financing
10 statement or other filed record.

11 ***Legislative Note:*** *States whose real-estate filing offices require additional information in*
12 *amendments and cannot search their records by both the name of the debtor and the file number*
13 *should enact Alternative B to Sections 9-512(a), 9-518(b), 9-518(d), 9-519(f) and 9-522(a).*

14 **Official Comment**

15 * * *

16 2. **Correction-Information Statements.** Former Article 9 did not afford a nonjudicial
17 means for a debtor to ~~correct-~~indicate that a financing statement or other record that was
18 inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file a ~~correction-~~an
19 information statement. Among other requirements, the ~~correction-~~information statement must
20 provide the basis for the debtor’s belief that the public record should be corrected. See
21 subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit
22 Reporting Act, 15 U.S.C. § 1681i, afford an aggrieved person the opportunity to state its position
23 on the public record. They do not permit an aggrieved person to change the legal effect of the
24 public record. Thus, although a filed ~~correction-~~information statement becomes part of the
25 “financing statement,” as defined in Section 9-102, the filing does not affect the effectiveness of
26 the initial financing statement or any other filed record. See subsection ~~(c)~~(e).

27 Sometimes a person files a termination statement or other record relating to a financing
28 statement without being entitled to do so. A secured party of record with respect to the financing
29 statement who believes that such a record has been filed may, but need not, file an information
30 statement indicating that the amendment was unauthorized. See subsection (c). An information

1 statement has no legal effect. Its sole purpose is to provide some limited public notice that the
2 efficacy of the amendment is disputed. If the person filing the record was not entitled to do so,
3 the filed record is ineffective, regardless of whether the secured party of record files an
4 information statement. Likewise, if the person filing the record was entitled to do so, the filed
5 record is effective, even if the secured party of record files an information statement. See
6 Section 9-510(a), 9-518(e). Because an information statement filed under subsection (c) has no
7 legal effect, a secured party of record—even one who is aware of the filing of an unauthorized
8 amendment—has no duty to file one. Searchers bear the burden of determining whether an
9 amendment is authorized, just as they bear the burden of determining whether a filed initial
10 financing statement is authorized.

11 This section does not displace other provisions of this Article that impose liability for
12 making unauthorized filings or failing to file or send a termination statement (see Section 9-
13 625(e)), nor does it displace any available judicial remedies.

14 3. **Resort to Other Law.** This Article cannot provide a satisfactory or complete solution
15 to problems caused by misuse of the public records. The problem of “bogus” filings is not
16 limited to the UCC filing system but extends to the real-property records, as well. A summary
17 judicial procedure for correcting the public record and criminal penalties for those who misuse
18 the filing and recording systems are likely to be more effective and put less strain on the filing
19 system than provisions authorizing or requiring action by filing and recording offices.

20 **SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT**
21 **AND AMENDMENT.**

22 (a) **[Initial financing statement form.]** A filing office that accepts written
23 records may not refuse to accept a written initial financing statement in the following form and
24 format except for a reason set forth in Section 9-516(b):

25 *[New form will be substituted for existing form]*

26 (b) **[Amendment form.]** A filing office that accepts written records may not refuse to accept a
27 written record in the following form and format except for a reason set forth in Section 9-516(b):

28 *[New form will be substituted for existing form]*

29 **SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

1 (a) **[Collection and enforcement generally.]** If so agreed, and in any event after
2 default, a secured party:

3 * * *

4 (3) may enforce the obligations of an account debtor or other person obligated on
5 collateral and exercise the rights of the debtor with respect to the obligation of the account
6 debtor or other person obligated on collateral to make payment or otherwise render performance
7 to the debtor, and with respect to any property that secures the obligations of the account debtor
8 or other person obligated on the collateral;

9 * * *

10 (b) **[Nonjudicial enforcement of mortgage.]** If necessary to enable a secured party to
11 exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the
12 secured party may record in the office in which a record of the mortgage is recorded:

13 (1) a copy of the security agreement that creates or provides for a security interest
14 in the obligation secured by the mortgage; and

15 (2) the secured party's sworn affidavit in recordable form stating that:

16 (A) a default has occurred with respect to the obligation secured by the
17 mortgage; and

18 (B) the secured party is entitled to enforce the mortgage nonjudicially.

19 **PART 8**

20 **TRANSITION PROVISIONS FOR 2010 AMENDMENTS**

21 **SECTION 9-801. EFFECTIVE DATE.** This [Act] takes effect on July 1, 2013.

1 **SECTION 9-802. SAVINGS CLAUSE.**

2 (a) **[Pre-effective-date transactions or liens.]** Except as otherwise provided in this
3 part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was
4 entered into or created before this [Act] takes effect.

5 (b) **[Pre-effective-date proceedings.]** This [Act] does not affect an action, case, or
6 proceeding commenced before this [Act] takes effect.

7 **SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE**
8 **DATE.**

9 (a) **[Continuing perfection: perfection requirements satisfied.]** A security interest
10 that is a perfected security interest immediately before this [Act] takes effect is a perfected
11 security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the
12 applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]]
13 are satisfied without further action.

14 (b) **[Continuing perfection: perfection requirements not satisfied.]** Except as
15 otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security
16 interest is a perfected security interest, but the applicable requirements for perfection under
17 [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security
18 interest remains perfected thereafter only if the applicable requirements for perfection under
19 [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.]

20 **SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE**
21 **EFFECTIVE DATE.** A security interest that is an unperfected security interest immediately
22 before this [Act] takes effect becomes a perfected security interest:

1 (1) without further action, when this [Act] takes effect if the applicable requirements for
2 perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

3 (2) when the applicable requirements for perfection are satisfied if the requirements are
4 satisfied after that time.

5 **SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE**
6 **EFFECTIVE DATE.**

7 (a) [**Pre-effective-date filing effective.**] The filing of a financing statement before this
8 [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy
9 the applicable requirements for perfection under [Article 9 as amended by this [Act]].

10 (b) [**When pre-effective-date filing becomes ineffective.**] This [Act] does not render
11 ineffective an effective financing statement that, before this [Act] takes effect, is filed and
12 satisfies the applicable requirements for perfection under the law of the jurisdiction governing
13 perfection as provided in [pre-amendment Article 9]. However, except as otherwise provided in
14 subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

15 (1) if the financing statement is filed in this State, at the time the financing
16 statement would have ceased to be effective had this [Act] not taken effect; or

17 (2) if the financing statement is filed in another jurisdiction, at the earlier of:

18 (A) the time the financing statement would have ceased to be effective
19 under the law of that jurisdiction; or

20 (B) June 30, 2018.

21 (c) [**Continuation statement.**] The filing of a continuation statement after this [Act]
22 takes effect does not continue the effectiveness of the financing statement filed before this [Act]

1 takes effect. However, upon the timely filing of a continuation statement after this [Act] takes
2 effect and in accordance with the law of the jurisdiction governing perfection as provided in
3 [pre-amendment Article 9], the effectiveness of a financing statement filed in the same office in
4 that jurisdiction before this [Act] takes effect continues for the period provided by the law of that
5 jurisdiction.

6 (d) **[Application of subsection (b)(2)(B) to transmitting utility financing statement.]**

7 Subsection (b)(2)(B) applies to a financing statement that, before this [Act] takes effect, is filed
8 against a transmitting utility and satisfies the applicable requirements for perfection under the
9 law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], only to
10 the extent that [Article 9 as amended by this [Act]] provides that the law of a jurisdiction other
11 than the jurisdiction in which the financing statement is filed governs perfection of a security
12 interest in collateral covered by the financing statement.

13 (e) **[Application of Part 5.]** A financing statement that includes a financing statement
14 filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect
15 is effective only to the extent that it satisfies the requirements of [Part 5 as amended by this
16 [Act]] for an initial financing statement.

17 **SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO**
18 **CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.**

19 (a) **[Initial financing statement in lieu of continuation statement.]** The filing of an
20 initial financing statement in the office specified in Section 9-501 continues the effectiveness of
21 a financing statement filed before this [Act] takes effect if:

1 (1) the filing of an initial financing statement in that office would be effective to
2 perfect a security interest under [Article 9 as amended by this [Act]];

3 (2) the pre-effective-date financing statement was filed in an office in another
4 State ~~or another office in this State~~; and

5 (3) the initial financing statement satisfies subsection (c).

6 (b) **[Period of continued effectiveness.]** The filing of an initial financing statement
7 under subsection (a) continues the effectiveness of the pre-effective-date financing
8 statement:

9 (1) if the initial financing statement is filed before this [Act] takes effect, for the
10 period provided in [unamended Section 9-515] with respect to an initial financing statement; and

11 (2) if the initial financing statement is filed after this [Act] takes effect, for the
12 period provided in Section 9-515 as amended by this [Act] with respect to an initial financing
13 statement.

14 (c) **[Requirements for initial financing statement under subsection (a).]** To be
15 effective for purposes of subsection (a), an initial financing statement must:

16 (1) satisfy the requirements of [Part 5 as amended by this [Act]] for an initial
17 financing statement;

18 (2) identify the pre-effective-date financing statement by indicating the office in
19 which the financing statement was filed and providing the dates of filing and file numbers, if
20 any, of the financing statement and of the most recent continuation statement filed with respect
21 to the financing statement; and

22 (3) indicate that the pre-effective-date financing statement remains effective.

1 **SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING**
2 **STATEMENT.**

3 (a) [**“Pre-effective-date financing statement”.**] In this section, “pre-effective-date
4 financing statement” means a financing statement filed before this [Act] takes effect.

5 (b) [**Applicable law.**] After this [Act] takes effect, a person may add or delete collateral
6 covered by, continue or terminate the effectiveness of, or otherwise amend the information
7 provided in, a pre-effective-date financing statement only in accordance with the law of the
8 jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]]. However,
9 the effectiveness of a pre-effective-date financing statement also may be terminated in
10 accordance with the law of the jurisdiction in which the financing statement is filed.

11 (c) [**Method of amending: general rule.**] Except as otherwise provided in subsection
12 (d), if the law of this State governs perfection of a security interest, the information in a pre-
13 effective-date financing statement may be amended after this [Act] takes effect only if:

14 (1) the pre-effective-date financing statement and an amendment are filed in the
15 office specified in Section 9-501;

16 (2) an amendment is filed in the office specified in Section 9-501 concurrently
17 with, or after the filing in that office of, an initial financing statement that satisfies Section 9-
18 806(c); or

19 (3) an initial financing statement that provides the information as amended and
20 satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

21 (d) [**Method of amending: continuation.**] If the law of this State governs perfection of
22 a security interest, the effectiveness of a pre-effective-date financing statement may be continued
23 only under Section 9-805(c) and (e) or 9-806.

1 (e) **[Method of amending: additional termination rule.]** Whether or not the law of
2 this State governs perfection of a security interest, the effectiveness of a pre-effective-date
3 financing statement filed in this State may be terminated after this [Act] takes effect by filing a
4 termination statement in the office in which the pre-effective-date financing statement is filed,
5 unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office
6 specified by the law of the jurisdiction governing perfection as provided in [Article 9 as
7 amended by this [Act]] as the office in which to file a financing statement.

8 **SECTION 9-808. PERSONS ENTITLED TO FILE INITIAL FINANCING**
9 **STATEMENT OR CONTINUATION STATEMENT.** A person may file an initial financing
10 statement or a continuation statement under this part if:

11 (1) the secured party of record authorizes the filing; and

12 (2) the filing is necessary under this part:

13 (A) to continue the effectiveness of a financing statement filed before this [Act]
14 takes effect; or

15 (B) to perfect or continue the perfection of a security interest.

16 **SECTION 9-809. PRIORITY.** This [Act] determines the priority of conflicting claims
17 to collateral. However, if the relative priorities of the claims were established before this [Act]
18 takes effect, [pre-amendment Article 9] determines priority.

APPENDIX B

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1 the goods, or a lease of specific goods and license of software used in the goods. The expanded
2 definition covers transactions in which the debtor's or lessee's monetary obligation includes
3 amounts owed with respect to software used in the goods. The monetary obligation with respect
4 to the software need not be owed under a license from the secured party or lessor, and the
5 secured party or lessor need not be a party to the license transaction itself. Among the types of
6 monetary obligations that are included in "chattel paper" are amounts that have been advanced
7 by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a
8 license of the software used in the goods. The definition also makes clear that rights to payment
9 arising out of credit-card transactions are not chattel paper.

10 Charters of vessels are expressly excluded from the definition of chattel paper; they are
11 accounts. The term "charter" as used in this section includes bareboat charters, time charters,
12 successive voyage charters, contracts of affreightment, contracts of carriage, and all other
13 arrangements for the use of vessels.

14 Under former Section 9-105, only if the evidence of an obligation consisted of "a writing
15 or writings" could an obligation qualify as chattel paper. In this Article, traditional, written
16 chattel paper is included in the definition of "tangible chattel paper." "Electronic chattel paper"
17 is chattel paper that is stored in an electronic medium instead of in tangible form. The concept
18 of an electronic medium should be construed liberally to include electrical, digital, magnetic,
19 optical, electromagnetic, or any other current or similar emerging technologies.

20 The definition of electronic chattel paper does not dictate that it be created in any
21 particular fashion. For example, a record consisting of a tangible writing may be converted to
22 electronic form (e.g., by creating electronic images of a signed writing). Or, records may be
23 initially created and executed in electronic form (e.g., a lessee might authenticate an electronic
24 record of a lease that is then stored in electronic form). In either case the resulting records are
25 electronic chattel paper. Likewise, tangible chattel paper results when chattel paper in electronic
26 form is converted to tangible form.

27 * * *

28 d. **"General Intangible"; "Payment Intangible."** "General intangible"
29 is the residual category of personal property, including things in action, that is not included in
30 the other defined types of collateral. Examples are various categories of intellectual property
31 and the right to payment of a loan of funds that is not evidenced by chattel paper or an
32 instrument. As used in the definition of "general intangible," "things in action" includes rights
33 that arise under a license of intellectual property, including the right to exploit the intellectual
34 property without liability for infringement. The definition has been revised to exclude
35 commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a
36 separate type of collateral. One important consequence of this exclusion is that tortfeasors
37 (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit
38 (letter-of-credit rights) are not "account debtors" having the rights and obligations set forth in
39 Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on
40 letters of credit are not obligated to pay an assignee (secured party) upon receipt of the

1 notification described in Section 9-404(a). See Comment 5.h. Another important consequence
2 relates to the adequacy of the description in the security agreement. See Section 9-108.

3 “Payment intangible” is a subset of the definition of “general intangible.” The sale of a
4 payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible
5 right could give rise to a right to payment of money once one hypothesizes, for example, that the
6 account debtor is in breach of its obligation. The term “payment intangible,” however, embraces
7 only those general intangibles “under which the account debtor’s *principal* obligation is a
8 monetary obligation.” (Emphasis added.)

9 In classifying intangible collateral, a court should begin by identifying the particular
10 rights that have been assigned. The account debtor (promisor) under a particular contract may
11 owe several types of monetary obligations as well as other, nonmonetary obligations. If the
12 promisee’s right to payment of money is assigned separately, the right is an account or payment
13 intangible, depending on how the account debtor’s obligation arose. When all the promisee’s
14 rights are assigned together, an account, a payment intangible, and a general intangible all may
15 be involved, depending on the nature of the rights.

16 A right to the payment of money is frequently buttressed by ancillary ~~covenants~~ rights,
17 such as covenants in a purchase agreement, note, or mortgage requiring insurance on the
18 collateral or forbidding removal of the collateral, ~~or~~ covenants to preserve the creditworthiness
19 of the promisor, such as covenants restricting dividends and the like, and the lessor’s rights with
20 respect to leased goods that arise upon the lessee’s default (see Section 2A-523). This Article
21 does not treat these ancillary rights separately from the rights to payment to which they relate.
22 For example, attachment and perfection of an assignment of a right to payment of a monetary
23 obligation, whether it be an account or payment intangible, also carries these ancillary rights.
24 Contrary to the opinion in *In re Commercial Money Center, Inc.*, 350 B.R. 465 (B.A.P. 9th Cir.
25 2006), if the lessor’s rights under a lease constitute chattel paper, an assignment of the lessor’s
26 right to payment under the lease also would be chattel paper, even if the assignment excludes
27 other rights.

28 Every “payment intangible” is also a “general intangible.” Likewise, “software” is a
29 “general intangible” for purposes of this Article. See Comment 25. Accordingly, except as
30 otherwise provided, statutory provisions applicable to general intangibles apply to payment
31 intangibles and software.

32 * * *

33 SECTION 9-104. CONTROL OF DEPOSIT ACCOUNT.

34 (a) [Requirements for control.] A secured party has control of a deposit account if:

35 (1) the secured party is the bank with which the deposit account is maintained;

1 (2) the debtor, secured party, and bank have agreed in an authenticated record that
2 the bank will comply with instructions originated by the secured party directing disposition of
3 the funds in the deposit account without further consent by the debtor;~~or~~

4 (3) the secured party becomes the bank’s customer with respect to the deposit
5 account.

6 * * *

7 **Official Comment**

8 * * *

9 3. **Requirements for “Control.”** This section derives from Section 8-106 of Revised
10 Article 8, which defines “control” of securities and certain other investment property. Under
11 subsection (a)(1), the bank with which the deposit account is maintained has control. The effect
12 of this provision is to afford the bank automatic perfection. No other form of public notice is
13 necessary; all actual and potential creditors of the debtor are always on notice that the bank with
14 which the debtor’s deposit account is maintained may assert a claim against the deposit account.

15 **Example:** D maintains a deposit account with Bank A. To secure a loan from Banks X,
16 Y, and Z, D creates a security interest in the deposit account in favor of Bank A, as agent
17 for Banks X, Y, and Z. Because Bank A is a “secured party” as defined in Section 9-102,
18 the security interest is perfected by control under subsection (a)(1).

19 Under subsection (a)(2), a secured party may obtain control by obtaining the bank’s
20 authenticated agreement that it will comply with the secured party’s instructions without further
21 consent by the debtor. The analogous provision in Section 8-106 does not require that the
22 agreement be authenticated. An agreement to comply with the secured party’s instructions
23 suffices for “control” of a deposit account under this section even if the bank’s agreement is
24 subject to specified conditions, e.g., that the secured party’s instructions are accompanied by a
25 certification that the debtor is in default. (Of course, if the condition is the *debtor’s* further
26 consent, the statute explicitly provides that the agreement would *not* confer control.) See revised
27 Section 8-106, Comment 7.

28 Under subsection (a)(3), a secured party may obtain control by becoming the bank’s
29 “customer,” as defined in Section 4-104. As the customer, the secured party would enjoy the
30 right (but not necessarily the exclusive right) to withdraw funds from, or close, the deposit
31 account. See Sections 4-401(a), 4-403(a).

32 * * *

1 **SECTION 9-109. SCOPE.**

2 (a) **[General scope of article.]** Except as otherwise provided in subsections (c) and (d),
3 this article applies to:

4 (1) a transaction, regardless of its form, that creates a security interest in personal
5 property or fixtures by contract;

6 * * *

7 * * *

8 **Official Comment**

9 * * *

10 2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and
11 (2). These subsections have been combined and shortened. No change in meaning is intended.
12 Under subsection (a)(1), all consensual security interests in personal property and fixtures are
13 covered by this Article, except for transactions excluded by subsections (c) and (d). As to which
14 transactions give rise to a “security interest,” the definition of that term in Section 1-201 must be
15 consulted. When a security interest is created, this Article applies regardless of the form of the
16 transaction or the name that parties have given to it. Likewise, the subjective intention of the
17 parties with respect to the legal characterization of their transaction is irrelevant to whether this
18 Article applies, as it was to the application of former Article 9 under the proper interpretation of
19 former Section 9-102.

20 * * *

21 **SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF**
22 **SECURITY INTERESTS.**

23 * * *

24 (3) Except as otherwise provided in paragraph (4), while negotiable documents, goods,
25 instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that
26 jurisdiction governs:

27 (A) perfection of a security interest in the goods by filing a fixture filing;

1 * * *

2 * * *

3 **Official Comment**

4 * * *

5 **5. Law Governing Perfection: Exceptions.** The general rule is subject to several
6 exceptions. It does not apply to goods covered by a certificate of title (see Section 9-303),
7 deposit accounts (see Section 9-304), investment property (see Section 9-305), or letter-of-credit
8 rights (see Section 9-306). Nor does it apply to possessory security interests, i.e., security
9 interests that the secured party has perfected by taking possession of the collateral (see paragraph
10 (2)), security interests perfected by filing a fixture filing (see subparagraph (3)(A)), security
11 interests in timber to be cut (subparagraph (3)(B)), or security interests in as-extracted collateral
12 (see paragraph (4)).

13 * * *

14 **b. ~~Fixtures~~ Fixture Filings.** ~~Application of~~ Under the general rule in paragraph
15 (1), a security interest in fixtures may be perfected by filing in the office specified by Section 9-
16 501(a) as enacted in the jurisdiction in which the debtor is located. However, application of this
17 rule to perfection of a security interest in fixtures by filing a fixture filing would yield strange
18 results. For example, perfection of a security interest in fixtures located in Arizona and owned
19 by a Delaware corporation would be governed by the law of Delaware. Although Delaware law
20 would send one to a filing office in Arizona for the place to file a financing statement as a fixture
21 filing, see Section 9-501, Delaware law would not take account of local, nonuniform, real-
22 property filing and recording requirements that Arizona law might impose. For this reason,
23 paragraph (3)(A) contains a special rule for security interests perfected by a fixture filing; the
24 law of the jurisdiction in which the fixtures are located governs perfection, including the formal
25 requisites of a fixture filing. Under paragraph (3)(C), the same law governs priority. Fixtures
26 are “goods” as defined in Section 9-102.

27 The filing of a financing statement to perfect a security interest in collateral of a
28 transmitting utility constitutes a fixture filing with respect to goods that are or become fixtures.
29 See Section 9-501(b). Accordingly, to perfect a security interest in goods of this kind by a
30 fixture filing, a financing statement must be filed in the office specified by Section 9-501(b) as
31 enacted in the jurisdiction in which the goods are located. If the fixtures collateral is located in
32 more than one State, filing in all of those States will be necessary to perfect a security interest in
33 all the fixtures collateral by a fixture filing. Of course, a security interest in nearly all types of
34 collateral (including fixtures) of a transmitting utility may be perfected by filing in the office
35 specified by Section 9-501(a) as enacted in the jurisdiction in which the transmitting utility is
36 located. However, such a filing will not be effective as a fixture filing except with respect to
37 goods that are located in that jurisdiction.

1 * * *

2 **SECTION 9-501. FILING OFFICE.**

3 * * *

4 (b) [**Filing office for transmitting utilities.**] The office in which to file a financing
5 statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is
6 the office of []. The financing statement also constitutes a fixture filing as to the collateral
7 indicated in the financing statement which is or is to become fixtures.

8 * * *

9 **Official Comment**

10 * * *

11 5. **Transmitting Utilities.** The usual filing rules do not apply well for a transmitting
12 utility (defined in Section 9-102). Many pre-UCC statutes provided special filing rules for
13 railroads and in some cases for other public utilities, to avoid the requirements for filing with
14 legal descriptions in every county in which such debtors had property. Former Section 9-401(5)
15 recreated and broadened these provisions, and subsection (b) follows this approach. The nature
16 of the debtor will inform persons searching the record as to where to make a search.

17 A given State's subsection (b) applies only if the local law of that State governs
18 perfection. As to most collateral, perfection by filing is governed by the law of the jurisdiction
19 in which the debtor is located. See Section 9-301(1). However, the law of the jurisdiction in
20 which goods that are or become fixtures are located governs perfection by fixture filing. See
21 Section 9-301(3)(A). As a consequence, filing in the filing office of more than one State may be
22 necessary to perfect by fixture filing a security interest in fixtures collateral of a transmitting
23 utility. See Section 9-301, Comment 5.b.

24 **SECTION 9-307. LOCATION OF DEBTOR.**

25 (a) [**“Place of business.”**] In this section, “place of business” means a place where a
26 debtor conducts its affairs.

1 (b) **[Debtor’s location: general rules.]** Except as otherwise provided in this section,
2 the following rules determine a debtor’s location:

3 (1) A debtor who is an individual is located at the individual’s principal
4 residence.

5 (2) A debtor that is an organization and has only one place of business is located
6 at its place of business.

7 (3) A debtor that is an organization and has more than one place of business is
8 located at its chief executive office.

9 (c) **[Limitation of applicability of subsection (b).]** Subsection (b) applies only if a
10 debtor’s residence, place of business, or chief executive office, as applicable, is located in a
11 jurisdiction whose law generally requires information concerning the existence of a
12 nonpossessory security interest to be made generally available in a filing, recording, or
13 registration system as a condition or result of the security interest’s obtaining priority over the
14 rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor
15 is located in the District of Columbia.

16 **Official Comment**

17 * * *

18 3. **Non-U.S. Debtors.** Under the general rules of this section, a non-U.S. debtor often
19 would be located in a foreign jurisdiction and, as a consequence, foreign law would govern
20 perfection. When foreign law affords no public notice of security interests, the general rule
21 yields unacceptable results.

22 Accordingly, subsection (c) provides that the normal rules for determining the location of
23 a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is “a jurisdiction
24 whose law generally requires information concerning the existence of a nonpossessory security
25 interest to be made generally available in a filing, recording, or registration system as a condition
26 or result of the security interest’s obtaining priority over the rights of a lien creditor with respect
27 to the collateral.” The phrase “generally requires” is meant to include legal regimes that

1 generally require notice in a filing or recording system as a condition of perfecting
2 nonpossessory security interests, but which permit perfection by another method (e.g., control,
3 automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has
4 adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in
5 subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or
6 registration system and none of the special rules in subsections (e), (f), (i), and (j) applies, the
7 debtor is located in the District of Columbia.

8 * * *

9 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**
10 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

11 (a) [**General priority rules.**] Except as otherwise provided in this section, priority
12 among conflicting security interests and agricultural liens in the same collateral is determined
13 according to the following rules:

14 (1) Conflicting perfected security interests and agricultural liens rank according
15 to priority in time of filing or perfection. Priority dates from the earlier of the time a filing
16 covering the collateral is first made or the security interest or agricultural lien is first perfected, if
17 there is no period thereafter when there is neither filing nor perfection.

18 * * *

19 **Official Comment**

20 * * *

21 **4. Competing Perfected Security Interests.** When there is more than one perfected
22 security interest, the security interests rank according to priority in time of filing or perfection.
23 “Filing,” of course, refers to the filing of an effective financing statement. “Perfection” refers to
24 the acquisition of a perfected security interest, i.e., one that has attached and as to which any
25 required perfection step has been taken. See Sections 9-308 and 9-309.

26 **Example 1:** On February 1, A files a financing statement covering a certain item of
27 Debtor’s equipment. On March 1, B files a financing statement covering the same
28 equipment. On April 1, B makes a loan to Debtor and obtains a security interest in the
29 equipment. On May 1, A makes a loan to Debtor and obtains a security interest in the

1 same collateral. A has priority even though B's loan was made earlier and was perfected
2 when made. It makes no difference whether A knew of B's security interest when A
3 made its advance.

4 The problem stated in Example 1 is peculiar to a notice-filing system under which filing
5 may occur before the security interest attaches (see Section 9-502). The justification for
6 determining priority by order of filing lies in the necessity of protecting the filing system—that is,
7 of allowing the first secured party who has filed to make subsequent advances without each time
8 having to check for subsequent filings as a condition of protection. Note, however, that this
9 first-to-file protection is not absolute. For example, Section 9-324 affords priority to certain
10 purchase-money security interests, even if a competing secured party was the first to file or
11 perfect.

12 Under a notice-filing system, a filed financing statement indicates to third parties that a
13 person may have a security interest in the collateral indicated. With further inquiry, they may
14 discover the complete state of affairs. When a financing statement that is ineffective when filed
15 becomes effective thereafter, the policy underlying the notice-filing system determines the “time
16 of filing” for purposes of subsection (a)(1). For example, the unauthorized filing of an otherwise
17 sufficient initial financing statement becomes authorized, and the financing statement becomes
18 effective, upon the debtor's post-filing authorization or ratification of the filing. See Section 9-
19 509, Comment 3. Because the authorization or ratification does not increase the notice value of
20 the financing statement, the time of the unauthorized filing is the “time of filing” for purposes of
21 subsection (a)(1). The same policy applies to the other priority rules in this part.

22 **Example 2:** A and B make non-purchase-money advances secured by the same
23 collateral. The collateral is in Debtor's possession, and neither security interest is
24 perfected when the second advance is made. Whichever secured party first perfects its
25 security interest (by taking possession of the collateral or by filing) takes priority. It
26 makes no difference whether that secured party knows of the other security interest at the
27 time it perfects its own.

28 The rule of subsection (a)(1), affording priority to the first to file or perfect, applies to
29 security interests that are perfected by any method, including temporarily (Section 9-312) or
30 upon attachment (Section 9-309), even though there may be no notice to creditors or subsequent
31 purchasers and notwithstanding any common-law rule to the contrary. The form of the claim to
32 priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the
33 first filing or perfection as long as there is no intervening period without filing or perfection.
34 See Section 9-308(c).

35 **Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest,
36 unfiled, in a negotiable document in the debtor's possession under Section 9-312(e). On
37 October 5, B files and thereby perfects a security interest that previously had attached to
38 the same document. On October 10, A files. A has priority, even after the 20-day period
39 expires, regardless of whether A knows of B's security interest when A files. A was the
40 first to perfect and maintained continuous perfection or filing since the start of the 20-day

1 period. However, the perfection of A's security interest extends only "to the extent it
2 arises for new value given." To the extent A's security interest secures advances made
3 by A beyond the 20-day period, its security interest would be subordinate to B's,
4 inasmuch as B was the first to file.

5 In general, the rule in subsection (a)(1) does not distinguish among various advances
6 made by a secured party. The priority of every advance dates from the earlier of filing or
7 perfection. However, in rare instances, the priority of an advance dates from the time the
8 advance is made. See Example 3 and Section 9-323.

9 **SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.**

10 * * *

11 **Official Comment**

12 * * *

13 3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for
14 their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a financing
15 statement the requirement that the debtor authorize in an authenticated record the filing of an
16 initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1),
17 if an amendment adds a debtor, the debtor who is added must authorize the amendment. A
18 person who files an unauthorized record in violation of subsection (a)(1) is liable under Section
19 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is
20 ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a).
21 Law other than this Article, including the law with respect to ratification of past acts, generally
22 determines whether a person has the requisite authority to file a record under this section. See
23 Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a
24 security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4.

25 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**
26 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

27 * * *

28 (c) [**Special priority rules: proceeds and supporting obligations.**] Except as
29 otherwise provided in subsection (f), a security interest in collateral which qualifies for priority

1 over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has
2 priority over a conflicting security interest in:

3 (1) any supporting obligation for the collateral; and

4 (2) proceeds of the collateral if:

5 (A) the security interest in proceeds is perfected;

6 (B) the proceeds are cash proceeds or of the same type as the collateral;

7 and

8 (C) in the case of proceeds that are proceeds of proceeds, all intervening
9 proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to
10 the collateral.

11 * * *

12 Official Comment

13 * * *

14 **8. Proceeds of Non-Filing Collateral: Non-Temporal Priority.** Subsection (c)(2)
15 provides a baseline priority rule for proceeds of non-filing collateral which applies if the secured
16 party has taken the steps required for non-temporal priority over a conflicting security interest in
17 non-filing collateral (e.g., control, in the case of deposit accounts, letter-of-credit rights, and
18 investment property). This rule determines priority in proceeds of non-filing collateral whether
19 or not there exists an actual conflicting security interest in the original non-filing collateral.
20 Under subsection (c)(2), the priority in the original collateral continues in proceeds if the
21 security interest in proceeds is perfected and the proceeds are cash proceeds or non-filing
22 proceeds “of the same type” as the original collateral. As used in subsection (c)(2), “type”
23 means a type of collateral defined in the Uniform Commercial Code and should be read broadly.
24 For example, a security is “of the same type” as a security entitlement (i.e., investment property),
25 and a promissory note is “of the same type” as a draft (i.e., an instrument).

26 * * *

27 The proceeds of proceeds are themselves proceeds. See Section 9-102 (defining
28 “proceeds” and “collateral”). Sometimes competing security interests arise in proceeds that are
29 several generations removed from the original collateral. As the following example explains, the
30 applicability of subsection (c) may turn on the nature of the intervening proceeds.

1 **Example 11:** SP-1 perfects its security interest in Debtor’s deposit account by obtaining
2 control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no
3 indication of a conflicting security interest, and advances against Debtor’s existing and
4 after-acquired inventory. Debtor uses funds from the deposit account to purchase
5 inventory, which SP-1 can trace as identifiable proceeds of its security interest in
6 Debtor’s deposit account, and which SP-2 claims as original collateral. The inventory is
7 sold and the proceeds deposited into *another* deposit account, as to which SP-1 has not
8 obtained control. Subsection (c) does not govern priority in this other deposit account.
9 This deposit account is cash proceeds and is also the same type of collateral as SP-1’s
10 original collateral, as required by subsections (c)(2)(A) and (B). However, SP-1’s
11 security interest does not satisfy subsection (c)(2)(C) because the inventory proceeds,
12 which intervened between the original deposit account and the deposit account
13 constituting the proceeds at issue, are not cash proceeds, proceeds of the same type as the
14 collateral (original deposit account), or an account relating to the collateral. Stated
15 otherwise, once proceeds other than cash proceeds, proceeds of the same type as the
16 original collateral, or an account relating to the original collateral intervene in the chain
17 of proceeds, priority under subsection (c) is thereafter unavailable. The special priority
18 rule in subsection (d) also is inapplicable to this case. See Comment 9, Example 13,
19 below. Instead, the general first-to-file-or-perfect rule of subsections (a) and (b) apply.
20 Under that rule, SP-1 has priority unless its security interest in the inventory proceeds
21 became unperfected under Section 9-315(d). Had SP-2 filed against inventory before SP-
22 1 obtained control of the original deposit account, the SP-2 would have had priority even
23 if SP-1’s security interest in the inventory proceeds remained perfected.

24 If two security interests in the same original collateral are entitled to priority in an item of
25 proceeds under subsection (c)(2), the security interest having priority in the original collateral
26 has priority in the proceeds.

27 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW**
28 **DEBTOR.**

29 * * *

30 **Official Comment**

31 * * *

32 **2. Subordination of Security Interests Created by New Debtor.** This section
33 addresses the priority contests that may arise when a new debtor becomes bound by the security
34 agreement of an original debtor and each debtor has a secured creditor.

35 Subsection (a) subordinates the original debtor’s secured party’s security interest
36 perfected against the new debtor solely under Section 9-508. The security interest is

1 subordinated to security interests in the same collateral perfected by another method, e.g., by
2 filing against the new debtor. As used in this section, “a filed financing statement that is
3 effective solely under Section 9-508” refers to a financing statement filed against the *original*
4 *debtor* that ~~continues to be~~ is effective under Section 9-508 to perfect a security interest in the
5 collateral in question. It does not encompass a new initial financing statement providing the
6 name of the new debtor, even if the initial financing statement is filed to maintain the
7 effectiveness of a financing statement under the circumstances described in Section 9-508(b).
8 Nor does it encompass a financing statement filed against the original debtor which remains
9 effective against collateral transferred by the original debtor to the new debtor. See Section 9-
10 508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-
11 507.

12 **SECTION 9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR**
13 **INSTRUMENT.**

14 **(a) [Purchaser’s priority: security interest claimed merely as proceeds.]** A
15 purchaser of chattel paper has priority over a security interest in the chattel paper which is
16 claimed merely as proceeds of inventory subject to a security interest if:

17 (1) in good faith and in the ordinary course of the purchaser’s business, the
18 purchaser gives new value and takes possession of the chattel paper or obtains control of the
19 chattel paper under Section 9-105; and

20 (2) the chattel paper does not indicate that it has been assigned to an identified
21 assignee other than the purchaser.

22 **(b) [Purchaser’s priority: other security interests.]** A purchaser of chattel paper has
23 priority over a security interest in the chattel paper which is claimed other than merely as
24 proceeds of inventory subject to a security interest if the purchaser gives new value and takes
25 possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in
26 good faith, in the ordinary course of the purchaser’s business, and without knowledge that the
27 purchase violates the rights of the secured party.

1 (2) the person holds an agricultural lien that has become effective at the time of
2 filing and the financing statement covers only collateral in which the person holds an agricultural
3 lien.

4 * * *

5 (d) [Person entitled to file certain amendments.] A person may file an amendment
6 other than an amendment that adds collateral covered by a financing statement or an amendment
7 that adds a debtor to a financing statement only if:

8 (1) the secured party of record authorizes the filing; or

9 (2) the amendment is a termination statement for a financing statement as to
10 which the secured party of record has failed to file or send a termination statement as required by
11 Section 9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates
12 that the debtor authorized it to be filed.

13 * * *

14 **Official Comment**

15 * * *

16 **6. Amendments; Termination Statements Authorized by Debtor.** Most amendments
17 may not be filed unless the secured party of record, as determined under Section 9-511,
18 authorizes the filing. See subsection (d)(1). However, under subsection (d)(2), the authorization
19 of the secured party of record is not required for the filing of a termination statement if the
20 secured party of record failed to send or file a termination statement as required by Section 9-
21 513, the debtor authorizes it to be filed, and the termination statement so indicates. An
22 authorization to file a record under subsection (d) is effective even if the authorization is not in
23 an authenticated record. Compare subsection (a)(1). However, both the person filing the record
24 and the person giving the authorization would be prudent to obtain and retain an authenticated
25 record authorizing the filing.

26 * * *

27 **SECTION 9-512. AMENDMENT OF FINANCING STATEMENT.**

1 **[Alternative A]**

2 (a) **[Amendment of information in financing statement.]** Subject to Section 9-509, a
3 person may add or delete collateral covered by, continue or terminate the effectiveness of, or,
4 subject to subsection (e), otherwise amend the information provided in, a financing statement by
5 filing an amendment that:

6 (1) identifies, by its file number, the initial financing statement to which the
7 amendment relates; and

8 (2) if the amendment relates to an initial financing statement filed [or recorded] in
9 a filing office described in Section 9-501(a)(1), provides the information specified in Section 9-
10 502(b).

11 **[Alternative B]**

12 (a) **[Amendment of information in financing statement.]** Subject to Section 9-509, a
13 person may add or delete collateral covered by, continue or terminate the effectiveness of, or,
14 subject to subsection (e), otherwise amend the information provided in, a financing statement by
15 filing an amendment that:

16 (1) identifies, by its file number, the initial financing statement to which the
17 amendment relates; and

18 (2) if the amendment relates to an initial financing statement filed [or recorded] in
19 a filing office described in Section 9-501(a)(1), provides the date [and time] that the initial
20 financing statement was filed [or recorded] and the information specified in Section 9-502(b).

21 **[End of Alternatives]**

22 * * *

23 **Official Comment**

1 * * *

2 **4. Amendment Adding Debtor.** An amendment that adds a debtor is effective,
3 provided that the added debtor authorizes the filing. See Section 9-509(a). However, filing an
4 amendment adding a debtor to a previously filed financing statement affords no advantage over
5 filing an initial financing statement against that debtor and may be disadvantageous. With
6 respect to the added debtor, for purposes of determining the priority of the security interest, the
7 time of filing is the time of the filing of the amendment, not the time of the filing of the initial
8 financing statement. See subsection (d). However, the effectiveness of the financing statement
9 lapses with respect to added debtor at the time it lapses with respect to the original debtor. See
10 subsection (b).

11 **5. Amendment Adding Debtor Name.** Many states have enacted statutes governing
12 the “conversion” of one organization, e.g., a corporation, into another, e.g., a limited liability
13 company. This Article defers to those statutes to determine whether the resulting organization is
14 the same legal person as the initial, converting organization (albeit with a different name) or
15 whether the resulting organization is a different legal person. When the governing statute does
16 not clearly resolve the question, a secured party whose debtor is the converting organization may
17 wish to proceed as if the statute provides for both results. In these circumstances, an amendment
18 adding to the initial financing statement the name of the resulting organization may be preferable
19 to an amendment substituting that name for the name of the debtor appearing on the initial
20 financing statement. In the event the governing statute is construed as providing that the
21 resulting organization is the same person as the converting organization but with a different
22 name, the timely filing of such an amendment would satisfy the requirement of Section 9-
23 507(c)(2). If, however, the governing statute is construed as providing that the resulting
24 organization is a different legal person, such an amendment would have the effect of adding the
25 resulting organization as a debtor. See Comment 4. Regardless of how the governing statute is
26 construed, the converting and resulting organizations may be organized under the law of
27 different jurisdictions and so may be located in different jurisdictions under Section 9-307. In
28 that case, a filing in the location of the resulting organization may be advisable.

29 **56. Deletion of All Debtors or Secured Parties of Record.** Subsection (e) assures that
30 there will be a debtor and secured party of record for every financing statement.

31 * * *

32 **SECTION 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.** Except
33 as otherwise provided in Section 9-624, to the extent that they give rights to a debtor or obligor
34 and impose duties on a secured party, the debtor or obligor may not waive or vary the rules
35 stated in the following listed sections:

1 * * *

2 (7) Sections 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

3 * * *

4 (10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in
5 satisfaction of obligation;

6 * * *

7 **Official Comment**

8 1. **Source.** Former Section 9-501(3).

9 2. **Waiver: In General.** Section 1-102(3) addresses which provisions of the UCC are
10 mandatory and which may be varied by agreement. With exceptions relating to good faith,
11 diligence, reasonableness, and care, immediate parties, as between themselves, may vary its
12 provisions by agreement. However, in the context of rights and duties after default, our legal
13 system traditionally has looked with suspicion on agreements that limit the debtor's rights and
14 free the secured party of its duties. As stated in former Section 9-501, Comment 4, "no
15 mortgage clause has ever been allowed to clog the equity of redemption." The context of default
16 offers great opportunity for overreaching. The suspicious attitudes of the courts have been
17 grounded in common sense. This section, like former Section 9-501(3), codifies this
18 long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the
19 secured party may not be waived or varied except as stated. Provisions that are not specified in
20 this section are subject to the general rules in Section 1-102(3).

21 3. **Nonwaivable Rights and Duties.** This section revises former Section 9-501(3) by
22 restricting the ability to waive or modify additional specified rights and duties: (i) duties under
23 Section 9-207(b)(4)(C), which deals with the use and operation of consumer goods, (ii) the right
24 to a response to a request for an accounting, concerning a list of collateral, or concerning a
25 statement of account (Section 9-210), (iii) the duty to collect collateral in a commercially
26 reasonable manner (Section 9-607), (iv) the implicit duty to refrain from a breach of the peace in
27 taking possession of collateral under Section 9-609, (v) the duty to apply noncash proceeds of
28 collection or disposition in a commercially reasonable manner (Sections 9-608 and 9-615), (vi)
29 the right to a special method of calculating a surplus or deficiency in certain dispositions to a
30 secured party, a person related to secured party, or a secondary obligor (Section 9-615), (vii) the
31 duty to give an explanation of the calculation of a surplus or deficiency (Section 9-616), (viii)
32 the right to limitations on the effectiveness of certain waivers (Section 9-624), and (ix) the right
33 to hold a secured party liable for failure to comply with this Article (Sections 9-625 and 9-626).
34 For clarity and consistency, this Article uses the term "waive or vary" instead of "renounc[e] or
35 modify[]," which appeared in former Section 9-504(3).

1 This section provides generally that the specified rights and duties “may not be waived or
2 varied.” However, it does not restrict the ability of parties to agree to settle, compromise, or
3 renounce claims for past conduct that may have constituted a violation or breach of those rights
4 and duties, even if the settlement involves an express “waiver.”

5 Section 9-610(c) limits the circumstances under which a secured party may purchase at
6 its own private disposition. Transactions of this kind are equivalent to “strict foreclosures” and
7 are governed by Sections 9-620, 9-621, and 9-622. The provisions of these sections can be
8 waived only as provided in Section 9-624(b).

9 **4. Waiver by Debtors and Obligors.** The restrictions on waiver contained in this
10 section apply to obligors as well as debtors. This resolves a question under former Article 9 as
11 to whether secondary obligors, assuming that they were “debtors” for purposes of former Part 5,
12 were permitted to waive, under the law of suretyship, rights and duties under that Part.

13 **5. Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in
14 limited circumstances. These waivers must be made in agreements that are authenticated.
15 Under Section 1-201, an “‘agreement’ means the bargain of the parties in fact.” In considering
16 waivers under Section 9-624 and analogous agreements in other contexts, courts should carefully
17 scrutinize putative agreements that appear in records that also address many additional or
18 unrelated matters.

19 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

20 * * *

21 (c) [**Purchase by secured party.**] A secured party may purchase collateral:

22 (1) at a public disposition; or

23 (2) at a private disposition only if the collateral is of a kind that is customarily

24 sold on a recognized market or the subject of widely distributed standard price quotations.

25 **Official Comment**

26 * * *

27 **7. Public vs. Private Dispositions.** This Part maintains two distinctions between
28 “public” and other dispositions: (i) the secured party may buy at the former, but normally not at
29 the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of “the time and place
30 of a public disposition” and notification of “the time after which” a private disposition or other
31 intended disposition is to be made (Section 9-613(1)(E)). It does not retain the distinction under
32 former Section 9-504(4), under which transferees in a noncomplying public disposition could

1 lose protection more easily than transferees in other noncomplying dispositions. Instead, Section
2 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a
3 “public disposition” is one at which the price is determined after the public has had a meaningful
4 opportunity for competitive bidding. “Meaningful opportunity” is meant to imply that some
5 form of advertisement or public notice must precede the sale (or other disposition) and that the
6 public must have access to the sale (disposition).

7 A secured party’s purchase of collateral at its own private disposition is equivalent to a
8 “strict foreclosure” and is governed by Sections 9-620, 9-621, and 9-622. The provisions of
9 these sections can be waived only as provided in Section 9-624(b).

10 * * *

11 **SECTION 9-624. WAIVER.**

12 (a) **[Waiver of disposition notification.]** A debtor or secondary obligor may waive the
13 right to notification of disposition of collateral under Section 9-611 only by an agreement to that
14 effect entered into and authenticated after default.

15 (b) **[Waiver of mandatory disposition.]** A debtor may waive the right to require
16 disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into
17 and authenticated after default.

18 (c) **[Waiver of redemption right.]** Except in a consumer-goods transaction, a debtor or
19 secondary obligor may waive the right to redeem collateral under Section 9-623 only by an
20 agreement to that effect entered into and authenticated after default.

21 **Official Comment**

22
23 1. **Source.** Former Sections 9-504(3), 9-505, 9-506.

24 2. **Waiver.** This section is a limited exception to Section 9-602, which generally
25 prohibits waiver by debtors and obligors. It makes no provision for waiver of the rule
26 prohibiting a secured party from buying at its own private disposition. Transactions of this kind
27 are equivalent to “strict foreclosures” and are governed by Sections 9-620, 9-621, and 9-622.

28 **SECTION 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

1 * * *

2 (b) [**Commercially reasonable disposition.**] Every aspect of a disposition of collateral,
3 including the method, manner, time, place, and other terms, must be commercially reasonable.
4 If commercially reasonable, a secured party may dispose of collateral by public or private
5 proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on
6 any terms.

7 * * *

8 **Official Comment**

9 * * *

10 2. **Commercially Reasonable Dispositions.** Subsection (a) follows former Section 9-
11 504 by permitting a secured party to dispose of collateral in a commercially reasonable manner
12 following a default. Although subsection (b) permits both public and private dispositions,
13 including public and private dispositions conducted over the Internet, “every aspect of a
14 disposition . . . must be commercially reasonable.” This section encourages private dispositions
15 on the assumption that they frequently will result in higher realization on collateral for the
16 benefit of all concerned. Subsection (a) does not restrict dispositions to sales; collateral may be
17 sold, leased, licensed, or otherwise disposed. Section 9-627 provides guidance for determining
18 the circumstances under which a disposition is “commercially reasonable.”

19 * * *

20 **SECTION 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

21 * * *

22 **Official Comment**

23 * * *

24 10. **Other Law.** Other State or federal law may contain requirements concerning
25 notification of a disposition of property by a secured party. For example, federal law imposes
26 notification requirements with respect to the enforcement of mortgages on federally documented
27 vessels. Principles of statutory interpretation and, in the context of federal law, supremacy and
28 preemption determine whether and to what extent law other than this Article supplements,
29 displaces, or is displaced by this Article. See Sections 1-103(b), 1-104, 9-109(c)(1).

1 **SECTION 9-621. NOTIFICATION OF PROPOSAL TO ACCEPT**

2 **COLLATERAL.**

3 (a) **[Persons to which proposal to be sent.]** A secured party that desires to accept
4 collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

5 * * *

6 * * *

7 **Official Comment**

8 * * *

9 2. **Notification Requirement.** Subsection (a) specifies three classes of competing
10 claimants to whom the secured party must send notification of its proposal: (i) those who notify
11 the secured party that they claim an interest in the collateral, (ii) holders of certain security
12 interests and liens who have filed against the debtor, and (iii) holders of certain security interests
13 who have perfected by compliance with a statute (including a certificate-of-title statute),
14 regulation, or treaty described in Section 9-311(a). With regard to (ii), see Section 9-611,
15 Comment 4. Subsection (b) also requires notification to any secondary obligor if the proposal is
16 for acceptance in partial satisfaction.

17 Unlike Section 9-611, this section contains no “safe harbor,” which excuses an enforcing
18 secured party from notifying certain secured parties and other lienholders. This is because,
19 unlike Section 9-610, which requires that a disposition of collateral be commercially reasonable,
20 Section 9-620 permits the debtor and secured party to set the amount of credit the debtor will
21 receive for the collateral subject only to the requirement of good faith. An effective acceptance
22 discharges subordinate security interests and other subordinate liens. See Section 9-622. If
23 collateral is subject to several liens securing debts much larger than the value of the collateral,
24 the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the
25 senior security interest, even though, had the debtor objected and the senior disposed of the
26 collateral under Section 9-610, the collateral may have yielded more than enough to satisfy the
27 senior security interest (but not enough to satisfy all the liens). Accordingly, this section
28 imposes upon the enforcing secured party the risk of the filing office’s errors and delay. The
29 holder of a security interest who is entitled to notification under this section but ~~does not receive~~
30 it to whom the enforcing secured party does not send notification has the right to recover under
31 Section 9-625(b) any loss resulting from the ~~enforcing~~ secured party’s noncompliance with this
32 section.

1 **SECTION 9-625. REMEDIES FOR SECURED PARTY’S FAILURE TO**
2 **COMPLY WITH ARTICLE.**

3 * * *

4 (c) **[Persons entitled to recover damages; statutory damages in consumer-goods**
5 **transaction if collateral is consumer goods.]** Except as otherwise provided in Section 9-628:

6 (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a
7 security interest in or other lien on the collateral may recover damages under subsection (b) for
8 its loss; and

9 (2) if the collateral is consumer goods, a person that was a debtor or a secondary
10 obligor at the time a secured party failed to comply with this part may recover for that failure in
11 any event an amount not less than the credit service charge plus 10 percent of the principal
12 amount of the obligation or the time-price differential plus 10 percent of the cash price.

13 * * *

14 **SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO**
15 **CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.**

16 (a) **[Initial financing statement in lieu of continuation statement.]** The filing of an
17 initial financing statement in the office specified in Section 9-501 continues the effectiveness of
18 a financing statement filed before this [Act] takes effect if:

19 (1) the filing of an initial financing statement in that office would be effective to
20 perfect a security interest under this [Act];

21 (2) the pre-effective-date financing statement was filed in an office in another
22 State or another office in this State; and

1 (3) the initial financing statement satisfies subsection (c).

2 * * *

3 (c) [Requirements for initial financing statement under subsection (a).] To be
4 effective for purposes of subsection (a), an initial financing statement must:

5 (1) satisfy the requirements of Part 5 for an initial financing statement;

6 (2) identify the pre-effective-date financing statement by indicating the office in
7 which the financing statement was filed and providing the dates of filing and file numbers, if
8 any, of the financing statement and of the most recent continuation statement filed with respect
9 to the financing statement; and

10 (3) indicate that the pre-effective-date financing statement remains effective.

11 Official Comment

12 * * *

13 **2. Requirements of Initial Financing Statement Filed in Lieu of Continuation**
14 **Statement.** Subsection (c) sets forth the requirements for the initial financing statement under
15 subsection (a). These requirements are needed to inform searchers that the initial financing
16 statement operates to continue a financing statement filed elsewhere and to enable searchers to
17 locate and discover the attributes of the other financing statement. The notice-filing policy of
18 this Article applies to the initial financing statements described in this section. Accordingly, an
19 initial financing statement that substantially satisfies the requirements of subsection (c) is
20 effective, even if it has minor errors or omissions, unless the errors or omissions make the
21 financing statement seriously misleading. See Section 9-506.

22 A single initial financing statement may continue the effectiveness of more than one
23 financing statement filed before this Article's effective date. See Section 1-102(5)(a) (words in
24 the singular include the plural). If a financing statement has been filed in more than one office in
25 a given jurisdiction, as may be the case if the jurisdiction had adopted former Section 9-401(1),
26 third alternative, then an identification of the filing in the central filing office suffices for
27 purposes of subsection (c)(2). If under this Article the collateral is of a type different from its
28 type under former Article 9—as would be the case, e.g., with a right to payment of lottery
29 winnings (a “general intangible” under former Article 9 and an “account” under this Article),
30 then subsection (c) requires that the initial financing statement indicate the type under this
31 Article.

APPENDIX C

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APPENDIX C

Amendments to Uniform Commercial Code Article 9 and
Modifications to Comments Relating to the Amendments
(Sections are arranged by topic)

Interim Draft of April 1, 2010

1 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

2 (a) [Article 9 definitions.] In this article:

3 * * *

4 (7) “Authenticate” means:

5 (A) to sign; or

6 (B) ~~to execute or otherwise adopt a symbol, or encrypt or similarly~~
7 ~~process a record in whole or in part, with the present intent of the authenticating person to~~
8 ~~identify the person and adopt or accept a record~~ with present intent to adopt or accept a record, to
9 attach to or logically associate with the record an electronic sound, symbol, or process.

10 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

11 (a) [Article 9 definitions.] In this article:

12 * * *

13 (10) “Certificate of title” means a certificate of title with respect to which a
14 statute provides for the security interest in question to be indicated on the certificate as a
15 condition or result of the security interest’s obtaining priority over the rights of a lien creditor
16 with respect to the collateral. The term includes another record maintained as an alternative to a
17 certificate of title by the governmental unit that issues certificates of title if a statute permits the

1 security interest in question to be indicated on the record as a condition or result of the security
2 interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

3 * * *

4 * * *

5 **Official Comment**

6 * * *

7 **11. Choice-of-Law-Related Definitions: “Certificate of Title”; “Governmental**
8 **Unit”; “Jurisdiction of Organization”; “Registered Organization”; “State.”** These new
9 definitions reflect the changes in the law governing perfection and priority of security interests
10 and agricultural liens provided in Part 3, Subpart 1.

11 Statutes often require applicants for a certificate of title to identify all security interests
12 on the application and require the issuing agency to indicate the identified security interests on
13 the certificate. Some of these statutes provide that priority over the rights of a lien creditor (i.e.,
14 perfection of a security interest) in goods covered by the certificate occurs upon indication of the
15 security interest on the certificate; that is, they provide for the indication of the security interest
16 on the certificate as a “condition” of perfection. Other statutes contemplate that perfection is
17 achieved upon the occurrence of another act, e.g., delivery of the application to the issuing
18 agency, that “results” in the indication of the security interest on the certificate. A certificate
19 governed by either type of statute can qualify as a “certificate of title” under this Article. The
20 statute need not expressly state the connection between the indication and perfection. For
21 example, a certificate issued pursuant to a statute that requires applications to identify security
22 interests, requires the issuing agency to indicate the identified security interests on the
23 certificate, but is silent concerning the legal consequences of the indication would be a
24 “certificate of title” if, under a judicial interpretation of the statute, perfection of a security
25 interest is a legal consequence of the indication.

26 The first sentence of the definition of “certificate of title” includes certificates consisting
27 of tangible records, of electronic records, and of combinations of tangible and electronic records.

28 In many States, a certificate of title covering goods that are encumbered by a security
29 interest is delivered to the secured party by the issuing authority. To eliminate the need for the
30 issuance of a paper certificate under these circumstances, several States have revised their
31 certificate-of-title statutes to permit or require a State agency to maintain an electronic record
32 that evidences ownership of the goods and in which a security interest in the goods may be
33 noted. The second sentence of the definition provides that such a record is a “certificate of title”
34 if it is in fact maintained as an alternative to the issuance of a paper certificate of title, regardless
35 of whether the certificate-of-title statute provides that the record is a certificate of title and even

1 if the statute does not expressly state that the record is maintained instead of issuing a paper
2 certificate.

3 * * *

4 **SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY**
5 **SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

6 (a) **[Security interest subject to other law.]** Except as otherwise provided in
7 subsection (d), the filing of a financing statement is not necessary or effective to perfect a
8 security interest in property subject to:

9 (1) a statute, regulation, or treaty of the United States whose requirements for a
10 security interest's obtaining priority over the rights of a lien creditor with respect to the property
11 preempt Section 9-310(a);

12 (2) [list any ~~certificate-of-title~~ statute covering automobiles, trailers, mobile
13 homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on
14 ~~the a~~ certificate of title as a condition or result of perfection, and any non-Uniform Commercial
15 Code central filing statute]; or

16 (3) a ~~certificate-of-title~~ statute of another jurisdiction which provides for a
17 security interest to be indicated on ~~the a~~ certificate of title as a condition or result of the security
18 interest's obtaining priority over the rights of a lien creditor with respect to the property.

19 * * *

20 **SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**

21 (a) **[General rule: control of electronic chattel paper.]** A secured party has control of
22 electronic chattel paper if a system employed for evidencing the transfer of interests in the

1 chattel paper reliably establishes the secured party as the person to which the chattel paper was
2 assigned.

3 (b) [Specific facts giving control.] A system satisfies subsection (a), and a secured
4 party has control of electronic chattel paper, if the record or records comprising the chattel paper
5 are created, stored, and assigned in such a manner that:

6 (1) a single authoritative copy of the record or records exists which is unique,
7 identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

8 (2) the authoritative copy identifies the secured party as the assignee of the record
9 or records;

10 (3) the authoritative copy is communicated to and maintained by the secured
11 party or its designated custodian;

12 (4) copies or ~~revisions~~ amendments that add or change an identified assignee of
13 the authoritative copy can be made only with the ~~participation~~ consent of the secured party;

14 (5) each copy of the authoritative copy and any copy of a copy is readily
15 identifiable as a copy that is not the authoritative copy; and

16 (6) any ~~revision~~ amendment of the authoritative copy is readily identifiable as an
17 authorized or unauthorized ~~revision~~.

18 **Official Comment**

19 * * *

20 2. **“Control” of Electronic Chattel Paper.** This Article covers security interests in
21 “electronic chattel paper,” a new term defined in Section 9-102. This section governs how
22 “control” of electronic chattel paper may be obtained. Subsection (a), which derives from
23 Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control.
24 Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general
25 test in subsection (a).

1 A secured party's control of electronic chattel paper (i) may substitute for an
2 authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a
3 method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-
4 temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred,
5 assigned, or possessed in the same manner as tangible chattel paper, a special definition of
6 control is necessary. In descriptive terms, this section provides that control of electronic chattel
7 paper is the functional equivalent of possession of "tangible chattel paper" (a term also defined
8 in Section 9-102).

9 **3. Development of Control Systems.** This Article leaves to the marketplace the
10 development of systems and procedures, through a combination of suitable technologies and
11 business practices, for dealing with control of electronic chattel paper in a commercial context.
12 Systems that evolve for control of electronic chattel paper may or may not involve a third party
13 custodian of the relevant records. As under UETA, a system must be shown to reliably establish
14 that the secured party is the assignee of the chattel paper. Reliability is a high standard and
15 encompasses the general principles of uniqueness, identifiability, and unalterability found in
16 subsection (b) without setting forth strict guidelines as to how these principles must be achieved.
17 However, the standards applied to determine whether a party is in control of electronic chattel
18 paper should not be more stringent than the standards now applied to determine whether a party
19 is in possession of tangible chattel paper. For example, just as a secured party does not lose
20 possession of tangible chattel paper merely by virtue of the possibility that a person acting on its
21 behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel
22 paper would not be defeated by the possibility that the secured party's interest could be
23 subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.

24 This section and the concept of control of electronic chattel paper are not based on the
25 same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of
26 investment property (Section 9-106), and letter-of-credit rights (Section 9-107). The rules for
27 control of that collateral are based on existing market practices and legal and regulatory regimes
28 for institutions such as banks and securities intermediaries. Analogous practices for electronic
29 chattel paper are developing nonetheless. The flexible approach adopted by this section,
30 moreover, should not impede the development of these practices and, eventually, legal and
31 regulatory regimes, which may become analogous to those for, e.g., investment property.

32 **34. "Authoritative Copy" of Electronic Chattel Paper.** One requirement for
33 establishing control under subsection (b) is that a particular copy be an "authoritative copy."
34 Although other copies may exist, they must be distinguished from the authoritative copy. This
35 may be achieved, for example, through the methods of authentication that are used or by
36 business practices involving the marking of any additional copies. When tangible chattel paper
37 is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel
38 paper is the authoritative copy it may be necessary to show that the tangible chattel paper no
39 longer exists or has been permanently marked to indicate that it is not the authoritative copy.

40 ~~**4. Development of Control Systems.** This Article leaves to the marketplace the~~
41 ~~development of systems and procedures, through a combination of suitable technologies and~~

1 business practices, for dealing with control of electronic chattel paper in a commercial context.
2 However, achieving control under this section requires more than the agreement of interested
3 persons that the elements of control are satisfied. For example, paragraph (4) contemplates that
4 control requires that it be a physical impossibility (or sufficiently unlikely or implausible so as to
5 approach practical impossibility) to add or change an identified assignee without the
6 participation of the secured party (or its authorized representative). It would not be enough for
7 the assignor merely to agree that it will not change the identified assignee without the assignee=
8 secured party's consent. However, the standards applied to determine whether a party is in
9 control of electronic chattel paper should not be more stringent than the standards now applied to
10 determine whether a party is in possession of tangible chattel paper. Control of electronic chattel
11 paper contemplates systems or procedures such that the secured party must take some action
12 (either directly or through its designated custodian) to effect a change or addition to the
13 authoritative copy. But just as a secured party does not lose possession of tangible chattel paper
14 merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver
15 the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the
16 possibility that the secured party's interest *could* be subverted by the wrongful conduct of a
17 person (such as a custodian) acting on its behalf.

18 Systems that evolve for control of electronic chattel paper may or may not involve a third
19 party custodian of the relevant records. However, this section and the concept of control of
20 electronic chattel paper are not based on the same concepts as are control of deposit accounts
21 (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter=
22 of-credit rights (Section 9-107). The rules for control of that collateral are based on existing
23 market practices and legal and regulatory regimes for institutions such as banks and securities
24 intermediaries. Analogous practices for electronic chattel paper are developing nonetheless.
25 The flexible approach adopted by this section, moreover, should not impede the development of
26 these practices and, eventually, legal and regulatory regimes, which may become analogous to
27 those for, e.g., investment property.

28 SECTION 9-316. CONTINUED PERFECTION OF SECURITY INTEREST

29 FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.

30 * * *

31 (h) [Effect on filed financing statement of change in governing law.] The following
32 rules apply to a security interest that attaches within four months after the debtor changes its
33 location to another jurisdiction:

34 (1) [Subject to paragraph (3), a] [A] financing statement filed before the change
35 pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to

1 perfect a security interest in the collateral if the financing statement would have been effective to
2 perfect a security interest in the collateral if the debtor had not changed its location.

3 (2) [Subject to paragraph (3), if] [If] a security interest that is perfected by a
4 financing statement that is effective under paragraph (1) becomes perfected under the law of the
5 other jurisdiction before the earlier of the time the financing statement would have become
6 ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the
7 expiration of the four-month period, it remains perfected thereafter. If the security interest does
8 not become perfected under the law of the other jurisdiction before the earlier time or event, it
9 becomes unperfected and is deemed never to have been perfected as against a purchaser of the
10 collateral for value.

11 [(3) A security interest that is perfected solely by a financing statement that is
12 effective solely under paragraph (1) is deemed to be unperfected as against a lessee, licensee, or
13 buyer, other than a secured party, of the collateral until it is perfected under the law of the other
14 jurisdiction.]

15 **SECTION 9-316. ~~CONTINUED PERFECTION OF SECURITY INTEREST~~**
16 **FOLLOWING EFFECT OF CHANGE IN GOVERNING LAW.**

17 * * *

18 (i) **[Effect of change in governing law on financing statement filed against original**
19 **debtor.]** If a financing statement naming an original debtor is filed pursuant to the law of the
20 jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another
21 jurisdiction, the following rules apply:

1 (1) [Subject to paragraph (3), the] [The] financing statement is effective to
2 perfect a security interest in collateral in which the new debtor has or acquires rights before or
3 within four months after the new debtor becomes bound under Section 9-203(d), if the financing
4 statement would have been effective to perfect a security interest in the collateral if it had been
5 acquired by the original debtor.

6 (2) [Subject to paragraph (3), a] [A] security interest that is perfected by the
7 financing statement and which becomes perfected under the law of the other jurisdiction before
8 the earlier of the expiration of the four-month period or the time the financing statement would
9 have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or
10 9-305(c) remains perfected thereafter. A security interest that is perfected by the financing
11 statement but which does not become perfected under the law of the other jurisdiction before the
12 earlier time or event becomes unperfected and is deemed never to have been perfected as against
13 a purchaser of the collateral for value.

14 [(3) A security interest that is perfected solely by a financing statement that is
15 effective solely under paragraph (1) is deemed to be unperfected as against a lessee, licensee, or
16 buyer, other than a secured party, of the collateral until it is perfected under the law of the other
17 jurisdiction.]

18 **SECTION 9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW**
19 **DEBTOR.**

20 **(a) [Subordination of security interest created by new debtor.]** Subject to subsection
21 (b), a security interest created by a new debtor which is perfected by a filed financing statement
22 that is effective solely under Section 9-508 or Sections 9-508 and 9-316(i)(1) in collateral in

1 which a new debtor has or acquires rights is subordinate to a security interest in the same
2 collateral which is perfected other than by a filed financing statement that is effective solely
3 under Section 9-508 or Sections 9-508 and 9-316(i)(1).

4 (b) [**Priority under other provisions; multiple original debtors.**] The other provisions
5 of this part determine the priority among conflicting security interests in the same collateral
6 perfected by filed financing statements that are effective solely under Section 9-508 or Sections
7 9-508 and 9-316(i)(1). However, if the security agreements to which a new debtor became
8 bound as debtor were not entered into by the same original debtor, the conflicting security
9 interests rank according to priority in time of the new debtor's having become bound.

10 **SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY**
11 **INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

12 (a) [**General priority rules.**] Except as otherwise provided in this section, priority
13 among conflicting security interests and agricultural liens in the same collateral is determined
14 according to the following rules:

15 (1) Conflicting perfected security interests and agricultural liens rank according
16 to priority in time of filing or perfection. Priority dates from the earlier of the time a filing
17 covering the collateral is first made or the security interest or agricultural lien is first perfected, if
18 there is no period thereafter when there is neither filing nor perfection.

19 * * *

20 (b) [**Time of perfection: proceeds and supporting obligations.**] For the purposes of
21 subsection (a)(1):

1 (1) the time of filing or perfection as to a security interest in collateral is also the
2 time of filing or perfection as to a security interest in proceeds; ~~and~~

3 (2) the time of filing or perfection as to a security interest in collateral supported
4 by a supporting obligation is also the time of filing or perfection as to a security interest in the
5 supporting obligation; and

6 (3) the time of filing or perfection as to a security interest in collateral which
7 remains perfected under Section 9-316(i)(2) is the time the security interest becomes perfected
8 under the law of the other jurisdiction.

9 * * *

10 (h) [Limitation on subsection (b)(3).] Subsection (b)(3) does not affect the priority of
11 competing security interests, each of which remains perfected under Section 9-316(i)(2).

12 **SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE**
13 **OF SECURITY INTEREST OR AGRICULTURAL LIEN.**

14 * * *

15 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a
16 buyer, other than a secured party, of tangible chattel paper, tangible documents, goods,
17 instruments, or a security certificate takes free of a security interest or agricultural lien if the
18 buyer gives value and receives delivery of the collateral without knowledge of the security
19 interest or agricultural lien and before it is perfected.

20 * * *

21 (d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a
22 buyer, other than a secured party, of ~~accounts, electronic chattel paper, general intangibles, or~~

1 ~~investment property~~ collateral other than tangible chattel paper, tangible documents, goods,
2 instruments, or a certificated security takes free of a security interest if the licensee or buyer
3 gives value without knowledge of the security interest and before it is perfected.

4 * * *

5 **Official Comment**

6 * * *

7 **6. Purchasers Other Than Secured Parties.**

8 * * *

9 Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected
10 by physical delivery of the representative piece of paper (tangible chattel paper, tangible
11 documents, instruments, and security certificates). To obtain priority, a buyer must both give
12 value and receive delivery of the collateral without knowledge of the existing security interest
13 and before perfection. Even if the buyer gave value without knowledge and before perfection,
14 the buyer would take subject to the security interest if perfection occurred before physical
15 delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to
16 lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all
17 security interests created by the lessor, even if perfected. See Section 9-321.

18 * * *

19 The rule of subsection (b) obviously is not appropriate where the collateral consists of
20 intangibles and there is no representative piece of paper whose physical delivery is the only or
21 the customary method of transfer. Therefore, with respect to such intangibles (including
22 accounts, electronic chattel paper, general intangibles, and investment property other than
23 certificated securities), subsection (d) gives priority to any buyer who gives value without
24 knowledge, and before perfection, of the security interest. A licensee of a general intangible
25 takes free of an unperfected security interest in the general intangible under the same
26 circumstances. Note that a licensee of a general intangible in ordinary course of business takes
27 rights under a nonexclusive license free of security interests created by the licensor, even if
28 perfected. See Section 9-321.

29 * * *

30 **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF**
31 **ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS**

1 **ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,**
2 **AND PROMISSORY NOTES INEFFECTIVE.**

3 * * *

4 (d) **[Term restricting assignment generally ineffective.]** Except as otherwise provided
5 in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an
6 agreement between an account debtor and an assignor or in a promissory note is ineffective to
7 the extent that it:

8 (1) prohibits, restricts, or requires the consent of the account debtor or person
9 obligated on the promissory note to the assignment or transfer of, or the creation, attachment,
10 perfection, or enforcement of a security interest in, the account, chattel paper, payment
11 intangible, or promissory note; or

12 (2) provides that the assignment or transfer or the creation, attachment,
13 perfection, or enforcement of the security interest may give rise to a default, breach, right of
14 recoupment, claim, defense, termination, right of termination, or remedy under the account,
15 chattel paper, payment intangible, or promissory note.

16 (e) **[Inapplicability of subsection (d) to certain sales.]** Subsection (d) does not apply
17 to the sale, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of
18 collateral under Section 9-620, of a payment intangible or promissory note.

19 * * *

20 **SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**
21 **NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL**
22 **INTANGIBLES INEFFECTIVE.**

1 (a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided
2 in subsection (b), a term in a promissory note or in an agreement between an account debtor and
3 a debtor which relates to a health-care-insurance receivable or a general intangible, including a
4 contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent
5 of the person obligated on the promissory note or the account debtor to, the assignment or
6 transfer of, or creation, attachment, or perfection of a security interest in, the promissory note,
7 health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

8 (1) would impair the creation, attachment, or perfection of a security interest; or

9 (2) provides that the assignment or transfer or the creation, attachment, or
10 perfection of the security interest may give rise to a default, breach, right of recoupment, claim,
11 defense, termination, right of termination, or remedy under the promissory note, health-care-
12 insurance receivable, or general intangible.

13 (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection
14 (a) applies to a security interest in a payment intangible or promissory note only if the security
15 interest arises out of a sale, other than a sale pursuant to a disposition under Section 9-610 or an
16 acceptance of collateral under Section 9-620, of the payment intangible or promissory note.

17 * * *

18 **SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING**
19 **STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.**

20 * * *

21 (b) **[Public-finance or manufactured-home transaction.]** Except as otherwise
22 provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a

1 public-finance transaction or manufactured-home transaction is effective for a period of 30 years
2 after the date of filing if it indicates that it is filed in connection with a public-finance transaction
3 or manufactured-home transaction.

4 * * *

5 (f) **[Transmitting utility financing statement.]** If a debtor is a transmitting utility and
6 a filed initial financing statement so indicates, the financing statement is effective until a
7 termination statement is filed.

8 * * *

9
10 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

11 (a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the
12 name of the debtor:

13 (1) subject to subsection (f), if the debtor is a registered organization, only if the
14 financing statement provides the name of the debtor indicated on the public organic record of
15 filed with or issued or enacted by the debtor's jurisdiction of organization which shows the
16 debtor to have been organized;

17 * * *

18 (f) **[Name of registered organization.]** For purposes of subsection (a)(1), "the name of
19 the debtor indicated on the public organic record" means the name that is stated to be the
20 debtor's name on the most recently filed or issued organic public record that purports to state,
21 amend, or restate the debtor's name.

22 **SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.**

23 (a) **[Article 9 definitions.]** In this article:

1 * * *

2 (50) “Jurisdiction of organization”, with respect to a registered organization,
3 means the jurisdiction under whose law the organization is formed or organized.

4 * * *

5 (67A) “Public organic record” means:

6 (A) a record or records consisting of the record initially filed with or
7 issued by a State or the United States to form or organize an organization and any record filed
8 with or issued by the State or the United States which effects an amendment or restatement of
9 the initial record, if the record or records are available to the public for inspection;

10 (B) an organic record or records of a business trust consisting of the
11 record initially filed with a State and any record filed with the State which effects an amendment
12 or restatement of the initial record, if a statute of the State governing business trusts requires that
13 the record or records be filed with the State and the record or records are available to the public
14 for inspection; and

15 (C) a record or records consisting of legislation enacted by the legislature
16 of a State or the Congress of the United States which forms or organizes an organization, any
17 record amending the legislation, and any record filed with or issued by the State or United States
18 which states the name of the organization, if the record or records are available to the public for
19 inspection.

20 * * *

21 (70) “Registered organization” means an organization formed or organized solely
22 under the law of a single State or the United States and as to which the State or the United States
23 must maintain a public record showing the organization to have been organized by the filing of a

1 public organic record with, the issuance of a public organic record by, or the enactment of
2 legislation by the State or United States. The term includes a business trust that is formed or
3 organized under the law of a single State if a statute of the State governing business trusts
4 requires that the business trust’s organic record be filed with the State.

5 * * *

6 * * *

7 *[Alternative Approaches to Name of Individual Debtor]*

8 *[Alternative A: Name for Individual Debtor—“Only If” Approach]*

9 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

10 (a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the
11 name of the debtor:

12 * * *

13 (3) * * *

14 * * *

15 (B) indicates, in the debtor’s name or otherwise, that the debtor is a trust
16 or is a trustee acting with respect to property held in trust; ~~and~~

17 (4) subject to subsection (g), if the debtor is an individual to whom this State has
18 issued a [driver’s license] that has not expired, only if it provides the name of the individual
19 which is indicated on the [driver’s license];

20 (5) if the debtor is an individual as to whom paragraph (4) does not apply, only if
21 it provides the individual name of the debtor or the surname and first personal name of the
22 debtor; and

1 (4)(6) in other cases:

2 (A) if the debtor has a name, only if it provides the ~~individual or~~
3 organizational name of the debtor; and

4 (B) if the debtor does not have a name, only if it provides the names of the
5 partners, members, associates, or other persons comprising the debtor, in a manner such that
6 each name provided would be sufficient if the person named were the debtor.

7 * * *

8 (g) [Multiple licenses or cards.] If this State has issued to an individual more than one
9 [driver's license] of a kind described in subsection (a)(4), the one that was issued most recently
10 is the one to which the subparagraph refers.

11 *[End of Alternative A—“Only If” Approach]*

12 *[Alternative B: Name for Individual Debtor—“Safe Harbor” Approach]*

13 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

14 (a) **[Sufficiency of debtor's name.]** A financing statement sufficiently provides the
15 name of the debtor:

16 * * *

17 (4) if the debtor is an individual, only if:

18 (A) it provides the individual name of the debtor;

19 (B) it provides the surname and first personal name of the debtor; or

20 (C) subject to subsection (g), it provides the name of the individual which
21 is indicated on a [driver's license] that this State has issued to the individual and which has not
22 expired; and

23 (45) in other cases:

1 (A) if the debtor has a name, only if it provides the ~~individual or~~
2 organizational name of the debtor; and

3 (B) if the debtor does not have a name, only if it provides the names of the
4 partners, members, associates, or other persons comprising the debtor, in a manner such that
5 each name provided would be sufficient if the person named were the debtor.

6 * * *

7 (g) **[Multiple licenses.]** If this State has issued to an individual more than one [driver's
8 license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the
9 one to which the subsection refers.

10 [End of Alternative B1]

11 [End of Alternatives]

12 **Legislative Notes:**

13 1. This Act contains two alternative sets of amendments relating to the names of
14 individual debtors. A State should enact the same Alternative, A or B, for both subsections (a)
15 and (g) of Section 9-503. A State that enacts Alternative A of the amendments to this section
16 should also enact the amendments to Section 9-502.

17 2. Both Alternatives refer, in part, to the name as shown on a debtor's driver's license.
18 The Legislature should be aware that, in some States, certain characters that may be used by the
19 State's department of motor vehicles (or similar agency) in the name on a driver's license may
20 not be accepted by the State's central or local UCC filing offices under current regulations or
21 internal protocols. This may occur because of technological limitations of the filing offices or
22 merely as a result of inconsistent procedures. Similar issues may exist for field sizes as well. In
23 these situations, perfection of a security interest granted by a debtor with such a driver's license
24 may be impossible under Alternative A of the amendments and the utility of Alternative B, under
25 which the name on the driver's license is one of the names that is sufficient, may be reduced.
26 Accordingly, the Legislature may wish to determine if one or more of these issues exist in this
27 State and, if so, to make certain that such issues have been resolved. A successful resolution
28 might be accomplished by statute, agency regulation, or technological change effectuated before
29 or as part of the enactment of this Act.

30 3. Regardless of which Alternative is enacted, in States in which in which a single agency
31 issues driver's licenses and non-driver identification cards as an alternative to a driver's

1 license, such that at any given time an individual may hold either a driver's license or an
2 identification card but not both, the Legislature should replace each use of the term "driver's
3 license" with a phrase meaning "driver's license or identification card" but containing the
4 analogous terms used in the enacting State. In other States, the Legislature should replace the
5 term "driver's license" with the analogous term used in the enacting State.

6 **SECTION 9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF**
7 **MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING**
8 **STATEMENT.**

9 * * *

10 (c) **[Record of mortgage as financing statement.]** A record of a mortgage is effective,
11 from the date of recording, as a financing statement filed as a fixture filing or as a financing
12 statement covering as-extracted collateral or timber to be cut only if:

13 (1) the record indicates the goods or accounts that it covers;

14 (2) the goods are or are to become fixtures related to the real property described
15 in the record or the collateral is related to the real property described in the record and is as-
16 extracted collateral or timber to be cut;

17 (3) the record satisfies the requirements for a financing statement in this section,
18 except that:

19 (A) it need not indicate ~~other than an indication~~ that it is to be filed in the
20 real property records; and

21 (B) it sufficiently provides the name of a debtor who is an individual if it
22 provides the individual name of the debtor or the surname and first personal name of the debtor,
23 even if the debtor is an individual as to whom Section 9-503(a)(4) applies; and

24 (4) the record is [duly] recorded.

1 * * *

2 ***Legislative Note:*** Only a State that enacts Alternative A of the amendments to Section 9-503
3 should enact the amendments to Section 9-502. As to the bracketed term “driver’s license,” see
4 Legislative Note 3 to Section 9-502.

5 *[End of Alternative Approaches to Name of Individual Debtor]*

6 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

7 (a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the
8 name of the debtor:

9 (1) except as otherwise provided in paragraph (3), if the debtor is a registered
10 organization or the collateral is held in a trust that is a registered organization, only if the
11 financing statement provides the name of the ~~debtor~~ registered organization indicated on the
12 public organic record of the ~~filed with or issued or enacted by the debtor’s registered~~
13 organization’s jurisdiction of organization ~~which shows the debtor to have been organized;~~

14 (2) if the debtor is a decedent’s estate, only if the financing statement provides the
15 name of the decedent and indicates that the debtor is an estate;

16 (3) if the debtor is a trust or a trustee acting with respect to property held in trust,
17 only if the financing statement:

18 (A) ~~provides the name specified for the trust in its organic documents or,~~
19 ~~if no name is specified, provides the name of the settlor and additional information sufficient to~~
20 ~~distinguish the debtor from other trusts having one or more of the same settlors; and~~

21 (B) ~~indicates, in the debtor’s name or otherwise, that the debtor is a trust~~
22 ~~or is a trustee acting with respect to property held in trust;~~

23 collateral is held in a trust that is not a registered organization, only if the financing statement:

1 (A) provides, as the name of the debtor:

2 (i) if the organic record of the trust specifies the name of the trust,
3 the name so specified; or

4 (ii) if the organic record of the trust does not specify a name for the
5 trust, the name of the settlor or testator under subsection (x); and

6 (B) in a separate part of the financing statement:

7 (i) if the name is provided in accordance with subparagraph (A)(i),
8 indicates that the collateral is held in a trust; or

9 (ii) if the name is provided in accordance with subparagraph
10 (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having
11 one or more of the same settlors or the same testator and indicates that the collateral is held in a
12 trust, unless the additional information so indicates;

13 (4) * * *

14 * * *

15 (x) The “name of the settlor or testator” in subsection (a)(3) means:

16 (1) if the settlor is a registered organization, the name of the registered
17 organization indicated on the public organic record filed with or issued or enacted by the
18 registered organization’s jurisdiction of organization; and

19 (2) in other cases, the name of the settlor or testator indicated in the trust’s
20 organic record.

21 **SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.**

1 (a) **[Sufficiency of debtor’s name.]** A financing statement sufficiently provides the
2 name of the debtor:

3 * * *

4 (2) subject to subsection (w), if the debtor is a decedent’s estate collateral is being
5 administered by the personal representative of a decedent, only if the financing statement
6 provides, as the name of the debtor, the name of the decedent and, in a separate part of the
7 financing statement, indicates that the debtor is an estate;

8 * * *

9 * * *

10 (w) **[Name of decedent.]** The name of the decedent indicated on the order appointing
11 the personal representative of the decedent issued by the court having jurisdiction over the
12 collateral is sufficient as the “name of the decedent” under subsection (a)(2).

13 **SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF**
14 **FINANCING STATEMENT.**

15 * * *

16 (c) **[Change in debtor’s name.]** If a name of a debtor which is sufficient under Section
17 9-503~~so~~ changes its name such that a filed financing statement becomes seriously misleading
18 under Section 9-506:

19 (1) the financing statement is effective to perfect a security interest in collateral
20 acquired by the debtor before, or within four months after, the change; and

21 (2) the financing statement is not effective to perfect a security interest in
22 collateral acquired by the debtor more than four months after the change, unless an amendment

1 to the financing statement which renders the financing statement not seriously misleading is filed
2 within four months after the change.

3 **SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT**
4 **AND AMENDMENT.**

5 **(a) [Initial financing statement form.]** A filing office that accepts written
6 records may not refuse to accept a written initial financing statement in the following form and
7 format except for a reason set forth in Section 9-516(b):

8 *[New form will be substituted for existing form]*

9 **(b) [Amendment form.]** A filing office that accepts written records may not refuse to accept a
10 written record in the following form and format except for a reason set forth in Section 9-516(b):

11 *[New form will be substituted for existing form]*

12 **SECTION 9-307. LOCATION OF DEBTOR.**

13 * * *

14 **(f) [Location of registered organization organized under federal law; bank**
15 **branches and agencies.]** Except as otherwise provided in subsection (i), a registered
16 organization that is organized under the law of the United States and a branch or agency of a
17 bank that is not organized under the law of the United States or a State are located:

18 (1) in the State that the law of the United States designates, if the law designates a
19 State of location;

20 (2) in the State that the registered organization, branch, or agency designates, if
21 the law of the United States authorizes the registered organization, branch, or agency to

1 designate its State of location, including by designating its main office, home office, or other
2 comparable office; or

3 (3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

4 * * *

5 **Official Comment**

6 **5. Registered Organizations Organized Under Law of United States; Branches and**
7 **Agencies of Banks Not Organized Under Law of United States.** Subsection (f) specifies the
8 location of a debtor that is a registered organization organized under the law of the United States.
9 It defers to the law of the United States, to the extent that that law determines, or authorizes the
10 debtor to determine, the debtor's location. Thus, if the law of the United States designates a
11 particular State as the debtor's location, that State is the debtor's location for purposes of this
12 Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered
13 organization to designate its State of location, the State that the registered organization
14 designates is the State in which it is located for purposes of this Article's choice-of-law rules. In
15 other cases, the debtor is located in the District of Columbia.

16 In some cases, the law of the United States authorizes the registered organization to
17 designate a main office, home office, or other comparable office. See, e.g., 12 U.S.C. Sections
18 22 and 1464(a); 12 C.F.R. Section 552.3. Designation of such an office constitutes the
19 designation of the State of location for purposes of Section 9-307 (f)(2).

20 Subsection (f) also specifies the location of a branch or agency in the United States of a
21 foreign bank that has one or more branches or agencies in the United States. The law of the
22 United States ~~authorized~~ authorizes a foreign bank (or, on behalf of the bank, a federal agency)
23 to designate a single home state for all of the foreign bank's branches and agencies in the United
24 States. See 12 U.S.C. Section 3103(c) and 12 C.F.R. Section 211.22. As authorized, the
25 designation constitutes the State of location for the branch or agency for purposes of Section 9-
26 307(f), unless all of a foreign bank's branches or agencies that are in the United States are
27 licensed in only one State, in which case the branches and agencies are located in that State. See
28 subsection (i).

29 In cases not governed by subsection (f) or (i), the location of a foreign bank is determined
30 by subsections (b) and (c).

31 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF** 32 **FILING.**

33 * * *

1 (b) **[Refusal to accept record; filing does not occur.]** Filing does not occur with
2 respect to a record that a filing office refuses to accept because:

3 * * *

4 (5) in the case of an initial financing statement or an amendment that provides a
5 name of a debtor which was not previously provided in the financing statement to which the
6 amendment relates, the record does not:

7 (A) provide a mailing address for the debtor; or

8 (B) indicate whether the debtor is an individual or an organization; ~~or~~

9 ~~(C) if the financing statement indicates that the debtor is an organization,~~
10 provide:

11 ~~(i) a type of organization for the debtor;~~

12 ~~(ii) a jurisdiction of organization for the debtor; or~~

13 ~~(iii) an organizational identification number for the debtor or~~
14 indicate that the debtor has none;

15 * * *

16 **SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY**
17 **FILED RECORD.**

18 (a) ~~[Who may file~~ **Statement with respect to record indexed under person's name.**

19 A person may file in the filing office ~~a correction~~ an information statement with respect to a
20 record indexed there under the person's name if the person believes that the record is inaccurate
21 or was wrongfully filed.

22 **[Alternative A]**

1 (b) [~~Sufficiency~~ Contents of correction statement under subsection (a).] ~~A~~

2 ~~correction~~ An information statement under subsection (a) must:

3 (1) identify the record to which it relates by the file number assigned to the initial
4 financing statement to which the record relates;

5 (2) indicate that it is ~~a correction~~ an information statement; and

6 (3) provide the basis for the person's belief that the record is inaccurate and
7 indicate the manner in which the person believes the record should be amended to cure any
8 inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

9 **[Alternative B]**

10 (b) [~~Sufficiency~~ Contents of correction statement under subsection (a).] ~~A~~

11 ~~correction~~ An information statement under subsection (a) must:

12 (1) identify the record to which it relates by:

13 (A) the file number assigned to the initial financing statement to which the
14 record relates; and

15 (B) if the ~~correction~~ information statement relates to a record filed [or
16 recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial
17 financing statement was filed [or recorded] and the information specified in Section 9-502(b);

18 (2) indicate that it is ~~a correction~~ an information statement; and

19 (3) provide the basis for the person's belief that the record is inaccurate and
20 indicate the manner in which the person believes the record should be amended to cure any
21 inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

22 **[End of Alternatives]**

1 amendment is authorized, just as they bear the burden of determining whether a filed initial
2 financing statement is authorized.

3 This section does not displace other provisions of this Article that impose liability for
4 making unauthorized filings or failing to file or send a termination statement (see Section 9-
5 625(e)), nor does it displace any available judicial remedies.

6 3. **Resort to Other Law.** This Article cannot provide a satisfactory or complete solution
7 to problems caused by misuse of the public records. The problem of “bogus” filings is not
8 limited to the UCC filing system but extends to the real-property records, as well. A summary
9 judicial procedure for correcting the public record and criminal penalties for those who misuse
10 the filing and recording systems are likely to be more effective and put less strain on the filing
11 system than provisions authorizing or requiring action by filing and recording offices.

12 **SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF**
13 **FILING.**

14 * * *

15 (b) **[Refusal to accept record; filing does not occur.]** Filing does not occur with
16 respect to a record that a filing office refuses to accept because:

17 * * *

18 (3) the filing office is unable to index the record because:

19 * * *

20 (B) in the case of an amendment or ~~correction~~information statement, the
21 record:

22 (i) does not identify the initial financing statement as required by
23 Section 9-512 or 9-518, as applicable; or

24 (ii) identifies an initial financing statement whose effectiveness
25 has lapsed under Section 9-515;

26 * * *

1 * * *

2 **SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

3 (a) **[Collection and enforcement generally.]** If so agreed, and in any event after
4 default, a secured party:

5 * * *

6 (3) may enforce the obligations of an account debtor or other person obligated on
7 collateral and exercise the rights of the debtor with respect to the obligation of the account
8 debtor or other person obligated on collateral to make payment or otherwise render performance
9 to the debtor, and with respect to any property that secures the obligations of the account debtor
10 or other person obligated on the collateral;

11 * * *

12 (b) **[Nonjudicial enforcement of mortgage.]** If necessary to enable a secured party to
13 exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the
14 secured party may record in the office in which a record of the mortgage is recorded:

15 (1) a copy of the security agreement that creates or provides for a security interest
16 in the obligation secured by the mortgage; and

17 (2) the secured party's sworn affidavit in recordable form stating that:

18 (A) a default has occurred with respect to the obligation secured by the
19 mortgage; and

20 (B) the secured party is entitled to enforce the mortgage nonjudicially.

21 **PART 8**

22 **TRANSITION PROVISIONS FOR 2010 AMENDMENTS**

1 **SECTION 9-801. EFFECTIVE DATE.** This [Act] takes effect on July 1, 2013.

2 **SECTION 9-802. SAVINGS CLAUSE.**

3 (a) **[Pre-effective-date transactions or liens.]** Except as otherwise provided in this
4 part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was
5 entered into or created before this [Act] takes effect.

6 (b) **[Pre-effective-date proceedings.]** This [Act] does not affect an action, case, or
7 proceeding commenced before this [Act] takes effect.

8 **SECTION 9-803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE**
9 **DATE.**

10 (a) **[Continuing perfection: perfection requirements satisfied.]** A security interest
11 that is a perfected security interest immediately before this [Act] takes effect is a perfected
12 security interest under [Article 9 as amended by this [Act]] if, when this [Act] takes effect, the
13 applicable requirements for attachment and perfection under [Article 9 as amended by this [Act]]
14 are satisfied without further action.

15 (b) **[Continuing perfection: perfection requirements not satisfied.]** Except as
16 otherwise provided in Section 9-805, if, immediately before this [Act] takes effect, a security
17 interest is a perfected security interest, but the applicable requirements for perfection under
18 [Article 9 as amended by this [Act]] are not satisfied when this [Act] takes effect, the security
19 interest remains perfected thereafter only if the applicable requirements for perfection under
20 [Article 9 as amended by this [Act]] are satisfied within one year after this [Act] takes effect.]

1 **SECTION 9-804. SECURITY INTEREST UNPERFECTED BEFORE**

2 **EFFECTIVE DATE.** A security interest that is an unperfected security interest immediately
3 before this [Act] takes effect becomes a perfected security interest:

4 (1) without further action, when this [Act] takes effect if the applicable requirements for
5 perfection under [Article 9 as amended by this [Act]] are satisfied before or at that time; or

6 (2) when the applicable requirements for perfection are satisfied if the requirements are
7 satisfied after that time.

8 **SECTION 9-805. EFFECTIVENESS OF ACTION TAKEN BEFORE**

9 **EFFECTIVE DATE.**

10 (a) [**Pre-effective-date filing effective.**] The filing of a financing statement before this
11 [Act] takes effect is effective to perfect a security interest to the extent the filing would satisfy
12 the applicable requirements for perfection under [Article 9 as amended by this [Act]].

13 (b) [**When pre-effective-date filing becomes ineffective.**] This [Act] does not render
14 ineffective an effective financing statement that, before this [Act] takes effect, is filed and
15 satisfies the applicable requirements for perfection under the law of the jurisdiction governing
16 perfection as provided in [pre-amendment Article 9]. However, except as otherwise provided in
17 subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

18 (1) if the financing statement is filed in this State, at the time the financing
19 statement would have ceased to be effective had this [Act] not taken effect; or

20 (2) if the financing statement is filed in another jurisdiction, at the earlier of:

21 (A) the time the financing statement would have ceased to be effective
22 under the law of that jurisdiction; or

1 (B) June 30, 2018.

2 (c) **[Continuation statement.]** The filing of a continuation statement after this [Act]
3 takes effect does not continue the effectiveness of the financing statement filed before this [Act]
4 takes effect. However, upon the timely filing of a continuation statement after this [Act] takes
5 effect and in accordance with the law of the jurisdiction governing perfection as provided in
6 [pre-amendment Article 9], the effectiveness of a financing statement filed in the same office in
7 that jurisdiction before this [Act] takes effect continues for the period provided by the law of that
8 jurisdiction.

9 (d) **[Application of subsection (b)(2)(B) to transmitting utility financing statement.]**
10 Subsection (b)(2)(B) applies to a financing statement that, before this [Act] takes effect, is filed
11 against a transmitting utility and satisfies the applicable requirements for perfection under the
12 law of the jurisdiction governing perfection as provided in [pre-amendment Article 9], only to
13 the extent that [Article 9 as amended by this [Act]] provides that the law of a jurisdiction other
14 than the jurisdiction in which the financing statement is filed governs perfection of a security
15 interest in collateral covered by the financing statement.

16 (e) **[Application of Part 5.]** A financing statement that includes a financing statement
17 filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect
18 is effective only to the extent that it satisfies the requirements of Part 5 as amended by this [Act]
19 for an initial financing statement.

20 **SECTION 9-806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO**
21 **CONTINUE EFFECTIVENESS OF FINANCING STATEMENT.**

1 (a) **[Initial financing statement in lieu of continuation statement.]** The filing of an
2 initial financing statement in the office specified in Section 9-501 continues the effectiveness of
3 a financing statement filed before this [Act] takes effect if:

4 (1) the filing of an initial financing statement in that office would be effective to
5 perfect a security interest under [Article 9 as amended by this [Act]];

6 (2) the pre-effective-date financing statement was filed in an office in another
7 State ~~or another office in this State~~; and

8 (3) the initial financing statement satisfies subsection (c).

9 (b) **[Period of continued effectiveness.]** The filing of an initial financing statement
10 under subsection (a) continues the effectiveness of the pre-effective-date financing
11 statement:

12 (1) if the initial financing statement is filed before this [Act] takes effect, for the
13 period provided in [unamended Section 9-515] with respect to an initial financing statement; and

14 (2) if the initial financing statement is filed after this [Act] takes effect, for the
15 period provided in Section 9-515 as amended by this [Act] with respect to an initial financing
16 statement.

17 (c) **[Requirements for initial financing statement under subsection (a).]** To be
18 effective for purposes of subsection (a), an initial financing statement must:

19 (1) satisfy the requirements of Part 5 as amended by this [Act] for an initial
20 financing statement;

21 (2) identify the pre-effective-date financing statement by indicating the office in
22 which the financing statement was filed and providing the dates of filing and file numbers, if

1 any, of the financing statement and of the most recent continuation statement filed with respect
2 to the financing statement; and

3 (3) indicate that the pre-effective-date financing statement remains effective.

4 **SECTION 9-807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING**
5 **STATEMENT.**

6 (a) [**“Pre-effective-date financing statement”.**] In this section, “pre-effective-date
7 financing statement” means a financing statement filed before this [Act] takes effect.

8 (b) [**Applicable law.**] After this [Act] takes effect, a person may add or delete collateral
9 covered by, continue or terminate the effectiveness of, or otherwise amend the information
10 provided in, a pre-effective-date financing statement only in accordance with the law of the
11 jurisdiction governing perfection as provided in [Article 9 as amended by this [Act]]. However,
12 the effectiveness of a pre-effective-date financing statement also may be terminated in
13 accordance with the law of the jurisdiction in which the financing statement is filed.

14 (c) [**Method of amending: general rule.**] Except as otherwise provided in subsection
15 (d), if the law of this State governs perfection of a security interest, the information in a pre-
16 effective-date financing statement may be amended after this [Act] takes effect only if:

17 (1) the pre-effective-date financing statement and an amendment are filed in the
18 office specified in Section 9-501;

19 (2) an amendment is filed in the office specified in Section 9-501 concurrently
20 with, or after the filing in that office of, an initial financing statement that satisfies Section 9-
21 806(c); or

1 (3) an initial financing statement that provides the information as amended and
2 satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

3 (d) **[Method of amending: continuation.]** If the law of this State governs perfection of
4 a security interest, the effectiveness of a pre-effective-date financing statement may be continued
5 only under Section 9-805(c) and (e) or 9-806.

6 (e) **[Method of amending: additional termination rule.]** Whether or not the law of
7 this State governs perfection of a security interest, the effectiveness of a pre-effective-date
8 financing statement filed in this State may be terminated after this [Act] takes effect by filing a
9 termination statement in the office in which the pre-effective-date financing statement is filed,
10 unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office
11 specified by the law of the jurisdiction governing perfection as provided in [Article 9 as
12 amended by this [Act]] as the office in which to file a financing statement.

13 **SECTION 9-808. PERSONS ENTITLED TO FILE INITIAL FINANCING**
14 **STATEMENT OR CONTINUATION STATEMENT.** A person may file an initial financing
15 statement or a continuation statement under this part if:

16 (1) the secured party of record authorizes the filing; and

17 (2) the filing is necessary under this part:

18 (A) to continue the effectiveness of a financing statement filed before this [Act]
19 takes effect; or

20 (B) to perfect or continue the perfection of a security interest.

1 **SECTION 9-809. PRIORITY.** This [Act] determines the priority of conflicting claims
2 to collateral. However, if the relative priorities of the claims were established before this [Act]
3 takes effect, [pre-amendment Article 9] determines priority.