

Regular Session, 2012

HOUSE BILL NO. 369

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

COMMERCIAL LAWS/LA.(UCC): Provides relative to Chapter 9 of the La. Commercial Laws

1 AN ACT

2 To amend and reenact R.S. 10:9-102(a)(7)(B), (10), (50), and (68) through (80), 9-105(a),
3 (b)(introductory paragraph), (4), and (6), 9-307(f)(introductory paragraph) and (2),
4 9-311(a)(introductory paragraph) and (3), 9-317(b) and (d), 9-326, 9-406(e),
5 9-408(b), 9-503(a)(1) through (4), and (b)(introductory paragraph) and (2), 9-507(c),
6 9-515(f), 9-516(b)(3)(B)(introductory paragraph) and (C), and (5), 9-518(a),
7 (b)(introductory paragraph) and (2), and (c), 9-523(g) and to enact R.S. 10:9-
8 102(a)(81), 9-316(h) and (i), 9-503(a)(5) and (6), and (f) through (h), 9-518(d) and
9 (e), and Part 8 of Title 10 of the Louisiana revised Statutes of 1950, to be comprised
10 of R.S. 10:9-801 through 9-809, relative to secured transactions; to provide for
11 definitions; to provide for control of electronic chattel paper; to provide for location
12 of the debtor; to provide for perfection of security interests; to provide for continued
13 perfection of security interests following change in governing law; to provide for
14 discharge of account debtor; to provide for interests that take priority over or take
15 free of security interests or agricultural liens; to provide for priority of security
16 interests created by a new debtor; to provide for restrictions on assignments; to
17 provide for sufficiency of a debtor's name; to provide for duration and effectiveness
18 of the financing statement; to provide for filing and effectiveness of filing; to provide
19 for claims concerning inaccurate or wrongfully filed records; to provide relative to
20 information received from the filing office; to provide for transitional provisions; to
21 provide for applicability and retroactivity; to provide for an effective date; and to
22 provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 10:9-102(a)(7)(B), (10), (50), and (68) through (80), 9-105(a),
3 (b)(introductory paragraph), (4), and (6), 9-307(f)(introductory paragraph) and (2),
4 9-311(a)(introductory paragraph) and (3), 9-317(b) and (d), 9-326, 9-406(e), 9-408(b),
5 9-503(a)(1) through (4), and (b)(introductory paragraph) and (2), 9-507(c), 9-515(f),
6 9-516(b)(3)(B)(introductory paragraph) and (C), and (5), 9-518(a), (b)(introductory
7 paragraph) and (2), and (c), 9-523(g) are hereby amended and reenacted and R.S. 10:9-
8 102(a)(81), 9-316(h) and (i), 9-503(a)(5) and (6), and (f) through (h), 9-518(d) and (e) are
9 hereby enacted to read as follows:

10 §9-102. Definitions and index of definitions

11 (a) In this Chapter:

12 * * *

13 (7) "Authenticate" means:

14 * * *

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

20 * * *

21 (10) "Certificate of title" means a certificate of title with respect to which a
22 statute provides for the security interest in question to be indicated on the certificate
23 as a condition or result of the security interest's obtaining priority over the rights of
24 a lien creditor with respect to the collateral. The term includes another record
25 maintained as an alternative to a certificate of title by the governmental unit that
26 issues certificates of title if a statute permits the security interest in question to be
27 indicated on the record as a condition or result of the security interest's obtaining
28 priority over the rights of a lien creditor with respect to the collateral.

29 * * *

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 (68) "Public organic record" means a record that is available to the public for
5 inspection and is:

6 (A) a record consisting of the record initially filed with or issued by a state
7 or the United States to form or organize an organization and any record filed with or
8 issued by the state or the United States which amends or restates the initial record;

9 (B) an organic record of a business trust consisting of the record initially
10 filed with a state and any record filed with the state which amends or restates the
11 initial record, if a statute of the state governing business trusts requires that the
12 record be filed with the state; or

13 (C) a record consisting of legislation enacted by the legislature of a state or
14 the Congress of the United States which forms or organizes an organization, any
15 record amending the legislation, and any record filed with or issued by the state or
16 the United States which amends or restates the name of the organization.

17 (69) "Pursuant to commitment", with respect to an advance made or other
18 value given by a secured party, means pursuant to the secured party's obligation,
19 whether or not a subsequent event of default or other event not within the secured
20 party's control has relieved or may relieve the secured party from its obligation.

21 ~~(69)~~(70) "Record", except as used in "for record", "of record", "record or
22 legal title", and "record owner", means information that is inscribed on a tangible
23 medium or which is stored in an electronic or other medium and is retrievable in
24 perceivable form.

25 ~~(70)~~(71) "Registered organization" means an organization formed or
26 organized solely under the law of a single State or the United States and as to which
27 the State or the United States must maintain a public record showing the organization
28 to have been organized. by the filing of a public organic record with, the issuance of
29 a public organic record by, or the enactment of legislation by the state or the United

1 States. The term includes a business trust that is formed or organized under the law
2 of a single state if a statute of the state governing business trusts requires that the
3 business trust's organic record be filed with the state. A Louisiana corporation,
4 limited liability company, partnership in commendam (limited partnership), or
5 registered limited liability partnership that is registered with the Louisiana secretary
6 of state is a registered organization.

7 ~~(71)~~(72) "Secondary obligor" means a guarantor, surety, or other obligor to
8 the extent that:

9 (A) the obligor's obligation is secondary; or

10 (B) the obligor has a right of recourse with respect to an obligation secured
11 by collateral against the debtor, another obligor, or property of either.

12 ~~(72)~~(73) "Secured party" means:

13 (A) a person in whose favor a security interest is created or provided for
14 under a security agreement, whether or not any obligation to be secured is
15 outstanding;

16 (B) a person that holds an agricultural lien;

17 (C) a consignor;

18 (D) a person to which accounts, chattel paper, payment intangibles, or
19 promissory notes have been sold;

20 (E) a trustee, indenture trustee, agent, collateral agent, or other representative
21 in whose favor a security interest or agricultural lien is created or provided for; or

22 (F) a person that holds a security interest arising under R.S. 10:4-210 or
23 5-118.

24 ~~(73)~~(74) "Security agreement" means an agreement that creates or provides
25 for a security interest.

26 ~~(74)~~(75) "Send", in connection with a record or notification, means:

27 (A) to deposit in the mail, deliver for transmission, or transmit by any other
28 usual means of communication, with postage or cost of transmission provided for,
29 addressed to any address reasonable under the circumstances; or

1 (B) to cause the record or notification to be received within the time that it
2 would have been received if properly sent under ~~subparagraph~~ Subparagraph (A).

3 ~~(75)(76)~~ "Software" means a computer program and any supporting
4 information provided in connection with a transaction relating to the program. The
5 term does not include a computer program that is included in the definition of goods.

6 ~~(76)(77)~~ "State" means a State of the United States, the District of Columbia,
7 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
8 subject to the jurisdiction of the United States.

9 ~~(77)(78)~~ "Supporting obligation" means a letter-of-credit right or secondary
10 obligation that supports the payment or performance of an account, chattel paper, a
11 document, a general intangible, an instrument, or investment property.

12 ~~(78)(79)~~ "Tangible chattel paper" means chattel paper evidenced by a record
13 or records consisting of information that is inscribed on a tangible medium.

14 ~~(79)(80)~~ "Termination statement" means an amendment of a financing
15 statement which:

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

18 (B) indicates either that it is a termination statement or that the identified
19 financing statement is no longer effective.

20 ~~(80)(81)~~ "Transmitting utility" means a person primarily engaged in the
21 business of:

22 (A) operating a railroad, subway, street railway, or trolley bus;

23 (B) transmitting communications electrically, electromagnetically, or by
24 light;

25 (C) transmitting goods by pipeline or sewer;

26 (D) transmitting or producing and transmitting electricity, steam, gas, or
27 water; or

28 (E) a combination of any of the foregoing.

29 * * *

1 §9-105. Control of electronic chattel paper

2 (a) General rule: control of electronic chattel paper. A secured party has
3 control of electronic chattel paper if a system employed for evidencing the transfer
4 of interests in the chattel paper reliably establishes the secured party as the person
5 to which the chattel paper was assigned.

6 (b) Specific facts giving control. A system satisfies Subsection (a) if the
7 record or records comprising the chattel paper are created, stored, and assigned in
8 such a manner that:

9 * * *

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

13 * * *

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

16 * * *

17 §9-307. Location of debtor

18 * * *

19 (f) Location of registered organization organized under federal law; bank
20 branches and agencies. Except as otherwise provided in ~~subsection~~ Subsection (i),
21 a registered organization that is organized under the law of the United States and a
22 branch or agency of a bank that is not organized under the law of the United States
23 or a State are located:

24 * * *

25 (2) in the State that the registered organization, branch, or agency designates,
26 if the law of the United States authorizes the registered organization, branch, or
27 agency to designate its ~~State~~ state of location, including by designating its main
28 office, home office, or other comparable office; or

29 * * *

1 §9-311. Perfection of security interests in property subject to certain statutes,
2 regulations, and treaties

3 (a) Security interest subject to other law. Except as otherwise provided in
4 ~~subsection (d)~~ Subsection (d) of this Section, the filing of a financing statement is not
5 necessary or effective to perfect a security interest in property subject to:

6 * * *

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

11 * * *

12 §9-316. Continued perfection of security interest following change in governing law

13 * * *

14 (h) Effect on filed financing statement of change in governing law. The
15 following rules apply to collateral to which a security interest attaches within four
16 months after the debtor changes its location to another jurisdiction:

17 (1) A financing statement filed before the change pursuant to the law of the
18 jurisdiction designated in R.S. 10:9-301(1) or 9-305(c) is effective to perfect a
19 security interest in the collateral if the financing statement would have been effective
20 to perfect a security interest in the collateral had the debtor not changed its location.

21 (2) If a security interest perfected by a financing statement that is effective
22 under Paragraph (1) of this Subsection becomes perfected under the law of the other
23 jurisdiction before the earlier of the time the financing statement would have become
24 ineffective under the law of the jurisdiction designated in R.S. 10:9-301(1) or
25 9-305(c) or the expiration of the four-month period, it remains perfected thereafter.
26 If the security interest does not become perfected under the law of the other
27 jurisdiction before the earlier time or event, it becomes unperfected and is deemed
28 never to have been perfected as against a purchaser of the collateral for value.

1 other than tangible chattel paper, tangible documents, goods, instruments, or a
2 certificated security takes free of a security interest if the licensee or buyer gives
3 value before it is perfected.

4 * * *

5 §9-326. Priority of security interests created by new debtor

6 (a) Subordination of security interest created by new debtor. Subject to
7 ~~subsection (b)~~ Subsection (b) of this Section, a security interest that is created by a
8 new debtor ~~which is in collateral in which the new debtor has or acquires rights and~~
9 is perfected solely by a filed financing statement ~~that is effective solely under R.S.~~
10 ~~10:9-508 in collateral in which a new debtor has or acquires rights would be~~
11 ineffective to perfect the security interest but for the application of R.S. 10:9-
12 316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which
13 is perfected other than by such a filed financing statement ~~that is effective solely~~
14 ~~under R.S. 10:9-508.~~

15 (b) Priority under other provisions; multiple original debtors. The other
16 provisions of this Part determine the priority among conflicting security interests in
17 the same collateral perfected by filed financing statements ~~that are effective solely~~
18 ~~under R.S. 10:9-508~~ described in Subsection (a) of this Section. However, if the
19 security agreements to which a new debtor became bound as debtor were not entered
20 into by the same original debtor, the conflicting security interests rank according to
21 priority in time of the new debtor's having become bound.

22 * * *

23 §9-406. Discharge of account debtor; notification of assignment; identification and
24 proof of assignment; restrictions on assignment of accounts, chattel paper,
25 payment intangibles, and promissory notes ineffective

26 * * *

27 (e) Inapplicability of ~~subsection (d)~~ Subsection (d) of this Section to certain
28 sales. Subsection (d) of this Section does not apply to the sale of a payment

1 intangible or promissory note, other than a sale pursuant to a disposition under R.S.
2 10:9-610 or an acceptance of collateral under R.S. 10:9-620.

3 * * *

4 §9-408. Restrictions on assignment of promissory notes, health-care-insurance
5 receivables, and certain general intangibles ineffective

6 * * *

7 (b) Applicability of ~~subsection (a)~~ Subsection (a) of this Section to sales of
8 certain rights to payment. Subject to ~~subsection (f)~~ Subsection (f) of this Section,
9 ~~subsection (a)~~ Subsection (a) of this Section applies to a security interest in a
10 payment intangible or promissory note only if the security interest arises out of a sale
11 of the payment intangible or promissory note, other than a sale pursuant to a
12 disposition under R.S. 10:9-610 or an acceptance of collateral under R.S. 10:9-620.

13 * * *

14 §9-503. Name of debtor and secured party

15 (a) Sufficiency of debtor's name. A financing statement sufficiently provides
16 the name of the debtor:

17 (1) except as otherwise provided in Paragraph (3) of this Subsection, if the
18 debtor is a registered organization or the collateral is held in a trust that is a
19 registered organization, only if the financing statement provides the name ~~of the~~
20 ~~debtor indicated~~ that is stated to be the registered organization's name on the public
21 organic record of most recently filed with or issued or enacted by the debtor's
22 registered organization's jurisdiction of organization which shows the debtor to have
23 ~~been organized~~ purports to state, amend, or restate the registered organization's
24 name;

25 (2) subject to Subsection (f) of this Section, if the ~~debtor is a decedent's~~
26 ~~estate~~ collateral is being administered by the personal representative of a decedent,
27 only if the financing statement provides, as the name of the debtor, the name of the
28 decedent and, in a separate part of the financing statement, indicates that the ~~debtor~~
29 ~~is an estate~~ collateral is being administered by a personal representative;

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

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

7 (B) ~~indicates, in the debtor's name or otherwise, that the debtor is a trust or~~
8 ~~is a trustee acting with respect to property held in trust; and collateral is held in a~~
9 ~~trust that is not a registered organization, only if the financing statement:~~

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

11 (i) if the organic record of the trust specifies a name for the trust, the name
12 specified; or

13 (ii) if the organic record of the trust does not specify a name for the trust, the
14 name of the settlor or testator; and

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

16 (i) if the name is provided in accordance with Subparagraph (A)(i) of this
17 Paragraph, indicates that the collateral is held in a trust; or

18 (ii) if the name is provided in accordance with Subparagraph (A)(ii) of this
19 Paragraph, provides additional information sufficient to distinguish the trust from
20 other trusts having one or more of the same settlors or the same testator and indicates
21 that the collateral is held in a trust, unless the additional information so indicates;

22 (4) subject to Subsection (g) of this Section, if the debtor is an individual to
23 whom this state has issued a driver's license that has not expired, only if the
24 financing statement provides the name of the individual which is indicated on the
25 driver's license;

26 (5) if the debtor is an individual to whom Paragraph (4) of this Subsection
27 does not apply, only if the financing statement provides the individual name of the
28 debtor or the surname and first personal name of the debtor; and

29 ~~(4)(6)~~ (6) in other cases:

1 (A) if the debtor has a name, only if it the financing statement provides the
2 ~~individual or~~ 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
5 that each name provided would be sufficient if the person named were the debtor.

6 (b) Additional debtor-related information. A financing statement that
7 provides the name of the debtor in accordance with ~~subsection (a)~~ Subsection (a) of
8 this Section is not rendered ineffective by the absence of:

9 * * *

10 (2) unless required under ~~subsection (a)(4)(B)~~ Subsection (a)(6)(B) of this
11 Section, names of partners, members, associates, or other persons comprising the
12 debtor.

13 * * *

14 (f) Name of decedent. The name of the decedent indicated on the order
15 appointing the personal representative of the decedent issued by the court having
16 jurisdiction over the collateral is sufficient as the "name of the decedent" under
17 Subsection (a)(2) of this Section.

18 (g) Multiple driver's licenses. If this state has issued to an individual more
19 than one driver's license of a kind described in Subsection (a)(4) of this Section, the
20 one that was issued most recently is the one to which Subsection (a)(4) of this
21 Section refers.

22 (h) Definition. In this Section, the "name of the settlor or testator" means:

23 (1) if the settlor is a registered organization, the name that is stated to be the
24 settlor's name on the public organic record most recently filed with or issued or
25 enacted by the settlor's jurisdiction of organization which purports to state, amend,
26 or restate the settlor's name; or

27 (2) in other cases, the name of the settlor or testator indicated in the trust's
28 organic record.

29 * * *

1 §9-507. Effect of certain events on effectiveness of financing statement

2 * * *

3 (c) Change in debtor's name. If ~~a debtor so changes its~~ the name that a filed
4 financing statement provides for a debtor becomes insufficient as the name of the
5 debtor under R.S. 10:9-503(a) so that the financing statement becomes seriously
6 misleading under R.S. 10:9-506:

7 (1) the financing statement is effective to perfect a security interest in
8 collateral acquired by the debtor before, or within four months after, the ~~change~~ filed
9 financing statement becomes seriously misleading; and

10 (2) the financing statement is not effective to perfect a security interest in
11 collateral acquired by the debtor more than four months after the ~~change~~ filed
12 financing statement becomes seriously misleading, unless an amendment to the
13 financing statement which renders the financing statement not seriously misleading
14 is filed within four months after ~~the change~~ the financing statement became seriously
15 misleading.

16 * * *

17 §9-515. Duration and effectiveness of financing statement; effect of lapsed
18 financing statement

19 * * *

20 (f) Transmitting utility financing statement. If a debtor is a transmitting
21 utility and a filed initial financing statement so indicates, the financing statement is
22 effective until a termination statement is filed.

23 * * *

24 §9-516. What constitutes filing; effectiveness of filing

25 * * *

26 (b) Refusal to accept record; filing does not occur. A filing office may
27 refuse to accept a record for filing only because:

28 * * *

1 (3)

2 * * *

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

5 * * *

6 (C) in the case of an initial financing statement that provides the name of a
7 debtor identified as an individual or an amendment that provides a name of a debtor
8 identified as an individual which was not previously provided in the financing
9 statement to which the record relates, the record does not identify the debtor's ~~last~~
10 name surname.

11 * * *

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

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

16 (B) indicate whether the name provided as the name of the debtor is the
17 name of an individual or an organization; ~~or~~

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

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

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

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

24 * * *

25 §9-518. Claim concerning inaccurate or wrongfully filed record

26 (a) ~~Correction statement~~ Statement with respect to record indexed under
27 person's name. A person may file in the filing office where the financing statement
28 was originally filed a ~~correction~~ an information statement with respect to a record

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

3 (b) ~~Sufficiency of correction statement~~ Contents of statement under
4 Subsection (a) of this Section. ~~A correction~~ An information statement under
5 Subsection (a) of this Section must:

6 * * *

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

8 * * *

9 (c) Statement by secured party of record. A person may file in the filing
10 office an information statement with respect to a record filed there if the person is
11 a secured party of record with respect to the financing statement to which the record
12 relates and believes that the person that filed the record was not entitled to do so
13 under R.S. 10:9-509(d).

14 (d) Contents of statement under Subsection (c) of this Section. An
15 information statement under Subsection (c) of this Section must:

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

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

19 (3) provide the basis for the person's belief that the person that filed the
20 record was not entitled to do so under R.S. 10:9-509(d).

21 ~~(e)~~(e) Record not affected by ~~correction~~ information statement. The filing
22 of ~~a correction~~ an information statement does not affect the effectiveness of an initial
23 financing statement or other filed record.

24 * * *

25 §9-523. Information from filing office; sale or license of records

26 * * *

27 (g) Certification. The secretary of state shall, within two business days
28 following receipt of information transmitted under R.S. 10:9-519(a)(4), send written
29 acknowledgment confirming such receipt and reflecting all information received and

1 included in the master index to the secured party of record, and to the person whose
2 name and address is listed in the record for such acknowledgment. The secretary of
3 state is excused from sending the acknowledgment to a secured party of record or a
4 person filing the record whose address is not provided in the record.

5 * * *

6 Section 2. Part 8 of Title 10 of the Louisiana revised Statutes of 1950, comprised of
7 R.S. 10:9-801 through 9-809, is hereby enacted to read as follows:

8 PART 8. EFFECTIVENESS

9 §9-801. Definition of "Act"; effective date

10 In this Part, "Act" means the Act that originated as House Bill No. 369 of the
11 2012 Regular Session of the Legislature which enacted this Part 8 and amended other
12 provisions of law in other Parts of this Chapter. The Act takes effect on July 1, 2013.

13 §9-802. Savings clause

14 (a) Pre-effective-date transactions or liens. Except as otherwise provided in
15 this Part, the Act applies to a transaction or lien within its scope, even if the
16 transaction or lien was entered into or created before the Act takes effect.

17 (b) Pre-effective-date proceedings. The Act does not affect an action, case,
18 or proceeding commenced before the Act takes effect.

19 §9-803. Security interest perfected before effective date

20 (a) Continuing perfection: perfection requirements satisfied. A security
21 interest that is a perfected security interest immediately before the Act takes effect
22 is a perfected security interest under Chapter 9 as amended by the Act if, when the
23 Act takes effect, the applicable requirements for attachment and perfection under
24 Chapter 9 as amended by the Act are satisfied without further action.

25 (b) Continuing perfection: perfection requirements not satisfied. Except as
26 otherwise provided in R.S. 10:9-805, if, immediately before the Act takes effect, a
27 security interest is a perfected security interest, but the applicable requirements for
28 perfection under Chapter 9 as amended by the Act are not satisfied when the Act
29 takes effect, the security interest remains perfected thereafter only if the applicable

1 requirements for perfection under Chapter 9 as amended by the Act are satisfied
2 within one year after the Act takes effect.

3 §9-804. Security interest unperfected before effective date

4 A security interest that is an unperfected security interest immediately before
5 the Act takes effect becomes a perfected security interest:

6 (1) without further action, when the Act takes effect if the applicable
7 requirements for perfection under Chapter 9 as amended by the Act were satisfied
8 before or at that time and remained satisfied at that time; or

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

11 Louisiana Official Revision Comments- 2012

12 The language in Paragraph (1) of this Section has been modified in Louisiana
13 to clarify that if the requirements for perfection under the new rules were satisfied
14 before the July 1, 2013, effective date, then those requirements must remain satisfied
15 on the effective date for this provision to apply. This clarification is consistent with
16 the intent of the source provision, R.S. 10:9-704, for this Section 9-804. The 2001
17 national official comment to Section 9-704 states that a security interest "becomes
18 a perfected security interest on the effective date [of that restatement] if, at that time,
19 the security interest satisfies the requirements for perfection" under the amended
20 statute. The Louisiana non-uniform changes in Paragraph (1) of this Section are
21 intended to avoid the unintended implication that a security interest which at one
22 time satisfied the requirements for perfection, but no longer does so on the effective
23 date, is nonetheless revived by the literal language of the national provision.

24 §9-805. Effectiveness of action taken before effective date

25 (a) Pre-effective-date filing effective. The filing of a financing statement
26 before the Act takes effect is effective to perfect a security interest to the extent the
27 filing would satisfy the applicable requirements for perfection under Chapter 9 as
28 amended by the Act.

29 (b) When pre-effective-date filing becomes ineffective. The Act does not
30 render ineffective an effective financing statement that, before the Act takes effect,
31 is filed, and satisfies the applicable requirements for perfection under the law of the
32 jurisdiction governing perfection as provided in Chapter 9 as it existed before
33 amendment by the Act; however, except as otherwise provided in Subsections (c)
34 and (d) of this Section and R.S. 10:9-806, the financing statement ceases to be
35 effective:

1 (1) if the financing statement is filed in this state, at the time the financing
2 statement would have ceased to be effective had the Act not taken effect; or

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

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

6 (B) June 30, 2018.

7 (c) Continuation statement. The filing of a continuation statement after the
8 Act takes effect does not continue the effectiveness of a financing statement filed
9 before the Act takes effect; however, upon the timely filing of a continuation
10 statement after the Act takes effect and in accordance with the law of the jurisdiction
11 governing perfection as provided in Chapter 9 as amended by the Act, the
12 effectiveness of a financing statement filed in the same office in that jurisdiction
13 before the Act takes effect continues for the period provided by the law of that
14 jurisdiction.

15 (d) Application of Subsection (b)(2)(B) of this Section to transmitting utility
16 financing statement. Subsection (b)(2)(B) of this Section applies to a financing
17 statement that, before the Act takes effect, is filed against a transmitting utility and
18 satisfies the applicable requirements for perfection under the law of the jurisdiction
19 governing perfection as provided in Chapter 9 as it existed before amendment by the
20 Act, only to the extent that Chapter 9 as amended by the Act provides that the law
21 of a jurisdiction other than the jurisdiction in which the financing statement is filed
22 governs perfection of a security interest in collateral covered by the financing
23 statement.

24 (e) Application of Part 5. A financing statement that includes a financing
25 statement filed before the Act takes effect and a continuation statement filed after the
26 Act takes effect is effective only to the extent that it satisfies the requirements of Part
27 5 as amended by the Act for an initial financing statement. A financing statement
28 that indicates that the debtor is a decedent's estate indicates that the collateral is
29 being administered by a personal representative within the meaning of R.S.

1 10:9-503(a)(2) as amended by the Act. A financing statement that indicates that the
2 debtor is a trust or is a trustee acting with respect to property held in trust indicates
3 that the collateral is held in a trust within the meaning of R.S. 10:9-503(a)(3) as
4 amended by the Act.

5 §9-806. When initial financing statement suffices to continue effectiveness of
6 financing statement

7 (a) Initial financing statement in lieu of continuation statement. The filing
8 of an initial financing statement in the office specified in R.S. 10:9-501 continues the
9 effectiveness of a financing statement filed before the Act takes effect if:

10 (1) the filing of an initial financing statement in that office would be
11 effective to perfect a security interest under Chapter 9 as amended by the Act;

12 (2) the pre-effective-date financing statement was filed in an office in
13 another state; and

14 (3) the initial financing statement satisfies Subsection (c) of this Section.

15 (b) Period of continued effectiveness. The filing of an initial financing
16 statement under Subsection (a) of this Section continues the effectiveness of the
17 pre-effective-date financing statement:

18 (1) if the initial financing statement is filed before the Act takes effect, for
19 the period provided in unamended R.S. 10:9-515 with respect to an initial financing
20 statement, and

21 (2) if the initial financing statement is filed after the Act takes effect, for the
22 period provided in R.S. 10:9-515 as amended by the Act with respect to an initial
23 financing statement.

24 (c) Requirements for initial financing statement under Subsection (a) of this
25 Section. To be effective for purposes of Subsection (a) of this Section, an initial
26 financing statement must:

27 (1) satisfy the requirements of Part 5 as amended by the Act for an initial
28 financing statement;

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

5 (3) indicate that the pre-effective-date financing statement remains effective.
6 §9-807. Amendment of pre-effective-date financing statement

7 (a) "Pre-effective-date financing statement". In this Section and in R.S.
8 10:9-806, "pre-effective-date financing statement" means a financing statement filed
9 before the Act takes effect.

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

17 (c) Method of amending: general rule. Except as otherwise provided in
18 Subsection (d) of this Section, if the law of this state governs perfection of a security
19 interest, the information in a pre-effective-date financing statement may be amended
20 after the Act takes effect only if:

21 (1) the pre-effective-date financing statement and an amendment are filed
22 in the office specified in R.S. 10:9-501;

23 (2) an amendment is filed in the office specified in R.S. 10:9-512(a)
24 concurrently with, or after the filing in that office of, an initial financing statement
25 that satisfies R.S. 10:9-806(c); or

26 (3) an initial financing statement that provides the information as amended
27 and satisfies R.S. 10:9-806(c) is filed in the office specified in R.S. 10:9-501.

1 (d) Method of amending: continuation. If the law of this state governs
2 perfection of a security interest, the effectiveness of a pre-effective-date financing
3 statement may be continued only under R.S. 10:9-805(c) and (e) or 9-806.

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

12 Louisiana Official Revision Comments - 2012

13 Subsection (a) is clarified in Louisiana. Although revised U.C.C. Article 9
14 defines this term solely for use in this Section, the term actually is used in Section
15 9-806 as well. Compare R.S. 10:9-710(b).

16 §9-808. Person entitled to file initial financing statement or continuation statement

17 A person may file an initial financing statement or a continuation statement
18 under this Part if:

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

20 (2) the filing is necessary under this Part:

21 (A) to continue the effectiveness of a financing statement filed before the
22 Act takes effect; or

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

24 §9-809. Priority

25 Chapter 9 as amended by the Act determines the priority of conflicting claims
26 to collateral; however, if the relative priorities of the claims were established before
27 the Act takes effect, Chapter 9 as it existed before amendment determines priority.

28 Section 3. The Louisiana State Law Institute is hereby directed to insert the
29 following comments following the provisions of R.S. 10:9-109(e).

30 Louisiana Official Revision Comments - 2012

1 The national official comments to this basic scope provision are revised to
2 clarify that "the subjective intention of the parties with respect to the legal
3 characterization of their transaction is irrelevant" to whether this Chapter applies.
4 As a general proposition, that statement is in accord with Louisiana jurisprudence,
5 which provides that the form of contractual instruments is of little account in
6 determining their nature. Although parties may attempt to structure their
7 relationships in particular ways by designating roles through the use of legally
8 charged language, Louisiana courts are bound to find the relationships as they exist,
9 and not simply as they have been described.

10 Certain Louisiana statutes, however, create exceptions to this general rule.
11 Examples include Subsection (e) of this Section, the Louisiana Exchange Sale of
12 Receivables Act (R.S. 9:3137.1, et seq.), the Louisiana Electric Utility Storm
13 Recovery Securitization Act (R.S. 45:1230), and the Louisiana Electric Utility
14 Investment Recovery Securitization Act (R.S. 45:1255), which provide that the
15 parties' characterization of a transaction within the scope of such provisions is
16 generally conclusive.

17 Section 4. The provisions of this Act shall become effective on July 1, 2013.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Foil

HB No. 369

Abstract: Provides for the revision of the Uniform Commercial Code-Secured Transactions in order to maintain national uniformity.

Present law (R.S. 10:9-102(a)(7)(B)) provides that "authenticate" means to process a record with the present intent of the authenticating person to identify the person and adopt or accept a record.

Proposed law changes the law in part by providing that "authenticate" means with present intent to adopt or accept a record, to attach to, or logically associate with the record an electronic sound, symbol, or process.

Present law (R.S. 10:9-102(a)(10)) defines "certificate of title" as a certification of title providing for the security interest to be indicated on the title.

Proposed law eliminates the need for the state's issuing authority to deliver a paper certificate of title covering goods that are encumbered by a security interest if the state agency that issues title certificates maintains an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. Further provides that such a record is a "certificate of title" if it is in fact maintained as an alternative to the issuance of a paper certificate.

Present law (R.S. 10:9-102(a)(50)) provides that, with respect to a registered organization, "jurisdiction of organization" means the jurisdiction under whose law the organization is organized.

Proposed law clarifies the law to include entities that are formed rather than organized.

Proposed law (R.S. 10:9-102(a)(68)) adds the definition of a "public organic record", and defines it as the original record to form or organize an organization, and any record filed

with or issued by the state or the U.S. amending or restating the initial record; and an organic record of business trust consisting of the original or amended record filed with the state.

Present law (R.S. 10:9-102(a)(71)) provides that "registered organization" means an organization formed or organized under the law of a single state or the U.S., and as to which a public record showing the organization to have been organized must be maintained.

Proposed law changes the law in part by using the new defined term "public organic record".

Proposed law clarifies the law by expressly providing that certain La. organizations are registered organizations.

Present law (R.S. 10:9-105) provides rules for control of electronic chattel paper.

Proposed law clarifies the law by providing that a person has control of electronic chattel paper if a system for evidencing transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

Present law (R.S. 10:9-307) provides rules regarding location of the debtor.

Proposed law clarifies the law regarding the location of registered organizations.

Present law (R.S. 10:9-311) provides for perfection of security interests in property subject to certain statutes, regulations, and treaties.

Proposed law does not change present law.

Present law (R.S. 10:9-316) provides for continued perfection of security interest following a change in governing law.

Proposed law changes the law in part by providing that a filed financing statement that would have been effective to perfect a security interest in the collateral if the debtor had not changed its location is effective to perfect a security interest in collateral acquired within four months after the relocation.

Proposed law changes present law in part regarding collateral acquired by new debtor.

Present law (R.S. 10:9-317) provides for interests that take priority over or take free of security interest or agricultural lien.

Proposed law clarifies but does not change present law.

Present law (R.S. 10:9-326) provides for priority of security interests created by new debtor.

Proposed law changes present law in part by adding a reference to new R.S. 10:9-316(i).

Present law (R.S. 10:9-406) provides for discharge of account debtor and assignment of accounts.

Proposed law changes present law in part by excepting certain sales from the rule of R.S. 10:9-406(e).

Present law (R.S. 10:9-408) provides for ineffectiveness in restrictions on assignments.

Proposed law changes present law in part by excepting certain sales from the rule of R.S. 10:9-408(b).

Present law (R.S. 10:9-503) provides for the sufficiency of a debtor's name in a financing statement and related matters.

Proposed law changes present law in part to provide for sufficiency of a debtor's name in instances in which the collateral is held in a trust that is a registered organization.

Proposed law changes present law in part by providing that if the debtor is an individual and the state has issued the debtor a driver's license that has not expired, the name is sufficiently indicated if the financing statement provides the name indicated on the driver's license.

Present law (R.S. 10:9-507) provides for effect of certain events on the effectiveness of the financing statement.

Proposed law changes present law in part to coordinate with the new provisions on sufficiency of debtor's name.

Present law (R.S. 10:9-515) provides for duration and effectiveness of financing statement.

Proposed law clarifies present law relating to a transmitting utility financing statement.

Present law (R.S. 10:9-516) provides for what constitutes filing and effectiveness of filing.

Proposed law changes present law in part relative to the reasons why a filing office may refuse to accept a record for filing.

Present law (R.S. 10:9-518) provides for claims regarding inaccurate or wrongfully filed record.

Proposed law clarifies present law by providing that a secured party may, in certain instances, file an information statement in the filing office with respect to a record filed there.

Present law (R.S. 10:9-523) provides for a written acknowledgment by the secretary of state's office of information received for indexing from a secured party or others.

Proposed law excuses the secretary of state from sending the acknowledgment to a party whose address is not provided in the record.

Effective July 1, 2013.

(Amends R.S. 10:9-102(a)(7)(B), (10), (50), and (68)-(80), 9-105(a), (b)(intro. par.), (4), and (6), 9-307(f)(intro. para.) and (2), 9-311(a)(intro. para.) and (3), 9-317(b) and (d), 9-326, 9-406(e), 9-408(b), 9-503(a)(1)-(4), and (b)(intro. para.) and (2), 9-507(c), 9-515(f), 9-516(b)(3)(B)(intro. para.) and (C), and (5), 9-518(a), (b)(intro. para.) and (2), and (c), 9-523(g); Adds R.S. 10:9-102(a)(81), 9-316(h) and (i), 9-503(a)(5) and (6), and (f)-(h), 9-518(d) and (e), and 9-801-9-809)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added technical amendments to conform provisions to the national uniform act.