

No. 2013-30

AN ACT

SB 381

Amending Titles 13 (Commercial Code), 30 (Fish) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, revising secured transaction provisions relating to definitions, to control of electronic chattel paper, to location of debtor, to perfection of security interests in property subject to certain statutes, regulations and treaties, to continued perfection of security interest following change in governing law, to interests which take priority over or take free of security interest or agricultural lien, to priority of security interests created by new debtor, to discharge of account debtor, notification of assignment, identification and proof of assignment, restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective, to restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective, to contents of financing statement, record of mortgage as financing statement, time of filing financing statement, to name of debtor and secured party, to effect of certain events on effectiveness of financing statement, to duration and effectiveness of financing statement, effect of lapsed financing statement, to what constitutes filing, effectiveness of filing, to claim concerning inaccurate or wrongfully filed record and to collection and enforcement by secured party; providing for transition provisions for 2013 amendments; imposing duties upon the Department of State and the Department of Transportation; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "authenticate," "certificate of title," "jurisdiction of organization" and "registered organization" in section 9102(a) of Title 13 of the Pennsylvania Consolidated Statutes are amended and the subsection is amended by adding a definition to read:

§ 9102. Definitions and index of definitions.

(a) Division 9 definitions.—The following words and phrases when used in this division shall have the meanings given to them in this subsection:

* * *

"Authenticate." To:

(i) sign; or

(ii) **execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part,** with [the] present intent **[of the authenticating person to identify the person and] to adopt or accept a record, attach to or logically associate with the record an electrical sound, symbol or process.**

* * *

"Certificate of title." A certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. **The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the**

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

* * *

"Jurisdiction of organization." With respect to a registered organization, the jurisdiction under whose law the organization is *formed* or organized.

* * *

"Public organic record." *A record that is available to the public for inspection and is:*

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

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

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

* * *

"Registered organization." An organization *formed* or organized solely under the law of a single state or the United States [and as to which the state or the United States must maintain a public record showing the organization to have been organized.] *by the filing of a public organic record, with the issuance of a public organic record by or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that a business trust's organic record be filed with the state.*

* * *

Section 2. Sections 9105, 9307(f)(2), 9308(a), 9310(b)(10), 9311(a)(2) and (3) and (b) and 9313(b) of Title 13 are amended to read:

§ 9105. Control of electronic chattel paper.

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

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

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

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

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

(4) copies or **[revisions] amendments** which add or change an identified assignee of the authoritative copy can be made only with the **[participation] consent** of the secured party;

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

(6) any **[revision] amendment** of the authoritative copy is readily identifiable as **[an] authorized or unauthorized [revision]**.

§ 9307. Location of debtor.

* * *

(f) Location of registered organization organized under Federal law; bank branches and agencies.—Except as otherwise provided in subsection (i), a registered organization which is organized under the law of the United States and a branch or agency of a bank which is not organized under the law of the United States or a state are located:

* * *

(2) in the state which the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch or agency to designate its state of location, **including by designating its main office, home office or other comparable office**; or

* * *

§ 9308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Perfection of security interest.—Except as otherwise provided in this section and section 9309 (relating to security interest perfected upon attachment), a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 9310 (relating to when filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply) through 9316 (relating to **[continued perfection of security interest following] effect of** change in governing law) have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

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§ 9310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

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(b) Exceptions: filing not necessary.—The filing of a financing statement is not necessary to perfect a security interest:

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(10) which is perfected under section 9316 (relating to **[continued perfection of security interest following] effect of** change in governing law).

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§ 9311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

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

* * *

(2) a **[certificate-of-title]** statute of this Commonwealth or regulations promulgated thereunder, to the extent such statute or regulations provide for a security interest to be indicated on **[the] certificate of title** as a condition or result of perfection; or

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

(b) Compliance with other law.—Compliance with the requirements of a statute, regulation or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this division. Except as otherwise provided in subsection (d) and sections 9313 (relating to when possession by or delivery to secured party perfects security interest without filing) and 9316(d) and (e) (relating to **[continued perfection of security interest following] effect of** change in governing law) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

* * *

§ 9313. When possession by or delivery to secured party perfects security interest without filing.

* * *

(b) Goods covered by certificate of title.—With respect to goods covered by a certificate of title issued by the Commonwealth, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9316(d) (relating to **[continued perfection of security interest following] effect of** change in governing law).

* * *

Section 3. Section 9316 heading of Title 13 is amended and the section is amended by adding subsections to read:

§ 9316. **[Continued perfection of security interest following] Effect of** change in governing law.

* * *

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

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 9301(a) or 9305(c) is

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

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9301(a) or 9305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) Effect of change in governing law on financing statement filed against original debtor.—If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 9301(a) or 9305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 9203(d) (relating to attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9301(a) or 9305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 4. Sections 9317(b) and (d), 9320(c), 9326, 9406(e), 9408(b) and 9502(c) of Title 13 are amended to read:

§ 9317. Interests which take priority over or take free of security interest or agricultural lien.

* * *

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

* * *

(d) Licensees and buyers of certain collateral.—A licensee of a general intangible or a buyer, other than a secured party, of [accounts, electronic chattel paper, electronic documents, general intangibles or investment

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

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§ 9320. Buyer of goods.

* * *

(c) Effectiveness of filing for subsection (b).—To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9316(a) and (b) (relating to [continued perfection of security interest following] *effect of change in governing law*).

* * *

§ 9326. Priority of security interests created by new debtor.

(a) Subordination of security interest created by new debtor.—Subject to subsection (b), a security interest *that is* created by a new debtor [which is] *in collateral in which the new debtor has or acquires rights and is perfected solely* by a filed financing statement which [is effective solely under section 9508 (relating to effectiveness of financing statement if new debtor becomes bound by security agreement) in collateral in which a new debtor has or acquires rights] *would be ineffective to perfect the security interest but for the application of section 9316(i)(1) (relating to effect of change in governing law) or 9508 (relating to effectiveness of financing statement if new debtor becomes bound by security agreement)* is subordinate to a security interest in the same collateral which is perfected other than by *such* a filed financing statement [which is effective solely under section 9508].

(b) Priority under other provisions; multiple original debtors.—The other provisions of this chapter determine the priority among conflicting security interests in the same collateral perfected by filed financing statements [which are effective solely under section 9508] *described in subsection (a)*. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

§ 9406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

* * *

(e) Inapplicability of subsection (d) to certain sales.—Subsection (d) does not apply to the sale of a payment intangible or promissory note, *other than a sale pursuant to a disposition under section 9610 (relating to disposition of collateral after default) or an acceptance of collateral under section 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral)*.

* * *

§ 9408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

* * *

(b) Applicability of subsection (a) to sales of certain rights to payment.—Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, *other than a sale pursuant to a disposition under section 9610 (relating to disposition of collateral after default) or an acceptance of collateral under section 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral).*

* * *

§ 9502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

* * *

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

(1) ~~[the]~~ *The* record indicates the goods or accounts which it covers[;].

(2) ~~[the]~~ *The* goods are or are to become fixtures related to the real property described in the record, or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut[;].

(3) ~~[the]~~ *The* record satisfies the requirements for a financing statement in this section ~~[other than an indication]~~ *subject to the following*:

(i) *The record need not indicate* that it is to be filed in the real property records[; and].

(ii) *The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 9503(a)(4) (relating to name of debtor and secured party) applies.*

(4) ~~[the]~~ *The* record is duly recorded.

* * *

Section 5. Section 9503(a) and (b)(2) of Title 13 are amended and the section is amended by adding subsections to read:

§ 9503. Name of debtor and secured party.

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

(1) ~~[If]~~ *Except as otherwise provided in paragraph (3), if* the debtor is a registered organization *or the collateral is held in a trust that is a registered organization*, only if the financing statement provides the name ~~[of the debtor indicated]~~ *that is stated to be the registered organization's name* on the public organic record ~~[of]~~ *most recently filed with or issued or enacted by* the ~~[debtor's]~~ *registered organization's*

jurisdiction of organization which **[shows the debtor to have been organized] purports to state, amend or restate the registered organization's name.**

(2) **[If] Subject to subsection (f), if the [debtor is a decedent's estate] collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the [debtor is an estate] collateral is being administered by a personal representative.**

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

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

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

(i) **provides, as the name of the debtor:**

(A) **if the organic record of the trust specifies a name for the trust, the name specified; or**

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

(ii) **in a separate part of the financing statement:**

(A) **if the name is provided under subparagraph (i)(A), indicates that the collateral is held in a trust; or**

(B) **if the name is provided under subparagraph (i)(B), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates.**

(4) **Subject to subsection (g), if the debtor is an individual to whom the Department of Transportation has issued a driver's license which has not expired under 75 Pa.C.S. § 1510(a) (relating to issuance and content of driver's license) or an identification card under 75 Pa.C.S. § 1510(b), only if the financing statement provides the name of the individual which is indicated on:**

(i) **except as set forth in subparagraph (ii), the driver's license;**

or

(ii) **if there is no driver's license, the identification card.**

(5) **If the debtor is an individual to whom paragraph (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor.**

[(4)] (6) In other cases:

(i) **if the debtor has a name, only if [it] the financing statement provides the [individual or] organizational name of the debtor; and**

(ii) if the debtor does not have a name, only if **[it] the financing statement** provides the names of the partners, members, associates or other persons comprising the debtor, **in a manner that each name provided would be sufficient if the person named were the debtor.**

(b) Additional debtor-related information.—A financing statement which provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

* * *

(2) unless required under subsection **[(a)(4)(ii)] (a)(6)(ii)**, names of partners, members, associates or other persons comprising the debtor.

* * *

(f) Name of decedent.—The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent under subsection (a)(2).

(g) Multiple driver's licenses.—If the department has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) Definition.—As used in this section, the term "name of the settlor or testator" means:

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

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

Section 6. Sections 9507(c), 9515(f) and 9516(b)(3)(ii) introductory paragraph and (iii) and (5) introductory paragraph, (ii) and (iii) of Title 13 are amended to read:

§ 9507. Effect of certain events on effectiveness of financing statement.

* * *

(c) Change in debtor's name.—If **[a debtor so changes its] the name that a filed financing statement provides for a debtor** becomes **insufficient as the name of the debtor under section 9503(a) (relating to name of debtor and secured party)** so that **the financing statement becomes** seriously misleading under section 9506:

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

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

§ 9515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

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

* * *

§ 9516. What constitutes filing; effectiveness of filing.

* * *

(b) Refusal to accept record; filing does not occur.—Filing does not occur with respect to a record which a filing office refuses to accept because one of the following paragraphs applies:

* * *

(3) The filing office is unable to index the record because of a reason stated in one of the following subparagraphs:

* * *

(ii) In the case of an amendment or **[correction] information** statement, the record:

* * *

(iii) In the case of an initial financing statement which provides the name of a debtor identified as an individual or an amendment which provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's **[last name] surname**.

* * *

(5) In the case of an initial financing statement or an amendment which provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not do **[one or more] both** of the following:

* * *

(ii) Indicate whether the *name provided as the name of the* debtor is *the name of* an individual or an organization.

[(iii) If the financing statement indicates that the debtor is an organization, provide:

(A) a type of organization for the debtor;

(B) a jurisdiction of organization for the debtor; or

(C) an organizational identification number for the debtor or indicate that the debtor has none.]

* * *

Section 7. Section 9518 subsection (a) and subsection (b) heading, introductory paragraph and (2) are amended, subsections are added, subsection (c) is relettered and amended and subsection (d) is relettered and paragraphs (1)(i), (ii) introductory paragraph, (iii), (v) introductory paragraph and (A), (vi) and (2) of Title 13 are amended to read:

§ 9518. Claim concerning inaccurate or wrongfully filed record.

(a) **[Correction statement] Statement with respect to record indexed under person's name**.—A person may file in the filing office **[a correction] an information** statement with respect to a record indexed there under the

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

(b) **[Sufficiency]** *Contents* of **[correction]** statement *under subsection (a)*.—**[A correction]** *An information* statement *under subsection (a)* must:

* * *

(2) indicate that it is **[a correction]** *an information* statement; and

* * *

(c) *Statement by secured party of record*.—*A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 9509(d) (relating to persons entitled to file a record).*

(d) *Contents of statement under subsection (c)*.—*An information statement under subsection (c) must:*

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

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

(3) *provide the basis for the person's belief that the person that filed the record was not entitled to do so under section 9509(d).*

[c] (e) Record not affected by **[correction]** *information* statement.—Except as provided in subsection **[(d)]** (f), the filing of **[a correction]** *an information* statement does not affect the effectiveness of an initial financing statement or other filed record.

[d] (f) *Fraudulent financing statements*.—

(1) The Department of State may conduct an administrative hearing to determine if an initial financing statement was fraudulently filed in accordance with the following:

(i) The hearing shall be conducted in accordance with 2 Pa.C.S. (relating to Administrative Law and Procedure). The department shall determine the initial financing statement to be fraudulently filed for purposes of this subsection if it determines that no rational basis exists under section 9509 **[(relating to persons entitled to file a record)]** entitling the person to file the initial financing statement and it appears that the person filed the initial financing statement with intent to annoy, harass or harm the debtor.

(ii) If the department determines that the initial financing statement was fraudulently filed and no timely appeal of the determination was filed, the department shall file **[a correction]** *an information* statement with respect to the initial financing statement indexed there. In addition to complying with the requirements of subsection (b), the **[correction]** *information* statement filed by the department under this paragraph shall state all of the following:

* * *

(iii) **[A correction]** *An information* statement filed by the department in accordance with paragraph (ii) creates a rebuttable presumption that the initial financing statement found to be fraudulently filed is ineffective.

* * *

(v) If the department determines that the initial financing statement was fraudulently filed and the determination is appealed to Commonwealth Court, the department shall file **[a correction] an information** statement with respect to the initial financing statement indexed there only upon affirmation by the court of its determination. In addition to complying with the requirements of subsection (b), the **[correction] information** statement shall state all of the following:

(A) the **[correction] information** statement was filed by the department under this subsection;

* * *

(vi) If the department files **[a correction] an information** statement with respect to the initial financing statement indexed there under this subsection, it shall refer the matter for criminal prosecution to the Office of Attorney General pursuant to 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

(2) Nothing in this subsection limits the rights or remedies the debtor may have with respect to an initial financing statement that has been fraudulently filed. Nothing in this subsection limits the effectiveness of **[a] any termination or [correction] information** statement filed by a debtor under sections 9509(d)(2) and 9513 (relating to termination statement) or the rights of a debtor under section 9625 (relating to remedies for secured party's failure to comply with division).

Section 8. Section 9607(b)(2)(i) of Title 13 is amended to read:

§ 9607. Collection and enforcement by secured party.

* * *

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

* * *

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

(i) a default has occurred *with respect to the obligation secured by the mortgage*; and

* * *

Section 9. Title 13 is amended by adding a chapter to read:

CHAPTER 98

TRANSITION PROVISIONS FOR 2013 AMENDMENTS

Sec.

9800. Definitions.

9801. Effective date.

9802. Savings clause.

9803. Security interest perfected before effective date.

9804. Security interest unperfected before effective date.

9805. Effectiveness of action taken before effective date.

9806. *When initial financing statement suffices to continue effectiveness of financing statement.*

9807. *Amendment of pre-effective-date financing statement.*

9808. *Person entitled to file initial financing statement or continuation statement.*

9809. *Priority.*

§ 9800. *Definitions.*

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"2013 Revision." The amendments which:

(1) affect this division; and

(2) are made by the act of June 27, 2013 (P.L.154, No.30), entitled "An act amending Titles 13 (Commercial Code), 30 (Fish) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, revising secured transaction provisions relating to definitions, to control of electronic chattel paper, to location of debtor, to perfection of security interests in property subject to certain statutes, regulations and treaties, to continued perfection of security interest following change in governing law, to interests which take priority over or take free of security interest or agricultural lien, to priority of security interests created by new debtor, to discharge of account debtor, notification of assignment, identification and proof of assignment, restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective, to restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective, to contents of financing statement, record of mortgage as financing statement, time of filing financing statement, to name of debtor and secured party, to effect of certain events on effectiveness of financing statement, to duration and effectiveness of financing statement, effect of lapsed financing statement, to what constitutes filing, effectiveness of filing, to claim concerning inaccurate or wrongfully filed record and to collection and enforcement by secured party; providing for transition provisions for 2013 amendments; imposing duties upon the Department of State and the Department of Transportation; and making editorial changes."

§ 9801. *Effective date.*

The 2013 Revision takes effect July 1, 2013.

§ 9802. *Savings clause.*

(a) Pre-effective-date transactions or liens.—Except as otherwise provided in this division,¹ the 2013 Revision applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the 2013 Revision takes effect.

(b) Pre-effective-date proceedings.—The 2013 Revision does not affect an action, case or proceeding commenced before the 2013 Revision takes effect.

§ 9803. *Security interest perfected before effective date.*

¹"this part," in enrolled bill.

(a) Continuing perfection; perfection requirements satisfied.—A security interest that is a perfected security interest immediately before the 2013 Revision takes effect is a perfected security interest under this division as amended by the 2013 Revision if, when the 2013 Revision takes effect, the applicable requirements for attachment and perfection under this division as amended by the 2013 Revision are satisfied without further action.

(b) Continuing perfection; perfection requirements not satisfied.—Except as otherwise provided in section 9805 (relating to effectiveness of action taken before effective date), if, immediately before the 2013 Revision takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this division as amended by the 2013 Revision are not satisfied when the 2013 Revision takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this division as amended by the 2013 Revision are satisfied within one year after the 2013 Revision takes effect.

§ 9804. Security interest unperfected before effective date.

A security interest that is an unperfected security interest immediately before the 2013 Revision takes effect becomes a perfected security interest:

(1) without further action when the 2013 Revision takes effect if the applicable requirements for perfection under this division as amended by the 2013 Revision are satisfied before or at that time; or

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

§ 9805. Effectiveness of action taken before effective date.

(a) Pre-effective-date filing effective.—The filing of a financing statement before the 2013 Revision takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this division as amended by the 2013 Revision.

(b) When pre-effective-date filing becomes ineffective.—The 2013 Revision does not render ineffective an effective financing statement that, before the 2013 Revision takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this division as it existed before amendment by the 2013 Revision. However, except as otherwise provided in subsections (c) and (d) and section 9806 (relating to when initial financing statement suffices to continue effectiveness of financing statement), the financing statement ceases to be effective:

(1) if the financing statement is filed in this Commonwealth, at the time the financing statement would have ceased to be effective had the 2013 Revision not taken effect; or

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

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

(ii) June 30, 2018.

(c) Continuation statement.—The filing of a continuation statement after the 2013 Revision takes effect does not continue the effectiveness of a

financing statement filed before the 2013 Revision takes effect. However, upon the timely filing of a continuation statement after the 2013 Revision takes effect and in accordance with the law of the jurisdiction governing perfection as provided in this division as amended by the 2013 Revision, the effectiveness of a financing statement filed in the same office in that jurisdiction before the 2013 Revision takes effect continues for the period provided by the law of that jurisdiction.

(d) Application of subsection (b)(2)(ii) to transmitting utility financing statement.—Subsection (b)(2)(ii) applies to a financing statement that, before the 2013 Revision takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this division as it existed before amendment by the 2013 Revision, only to the extent that this division as amended by the 2013 Revision provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) Application of Chapter 95.—A financing statement that includes a financing statement filed before the 2013 Revision takes effect and a continuation statement filed after the 2013 Revision takes effect is effective only to the extent that it satisfies the requirements of Chapter 95 (relating to filing) as amended by the 2013 Revision for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 9503(a)(2) (relating to name of debtor and secured party) as amended by the 2013 Revision. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 9503(a)(3) as amended by the 2013 Revision.

§ 9806. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement.—The filing of an initial financing statement in the office specified in section 9501 (relating to filing office) continues the effectiveness of a financing statement filed before the 2013 Revision takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this division as amended by the 2013 Revision;

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

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

(b) Period of continued effectiveness.—The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before the 2013 Revision takes effect, for the period provided in section 9515(a), (b), (c),

(d), (e)¹ and (g) (relating to duration and effectiveness of financing statement; effect of lapsed financing statement) with respect to an initial financing statement; and

(2) if the initial financing statement is filed after the 2013 Revision takes effect, for the period provided in section 9515(f) as amended by the 2013 Revision with respect to an initial financing statement.

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

(1) satisfy the requirements of Chapter 95 (relating to filing) as amended by the 2013 Revision for an initial financing statement;

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

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

§ 9807. Amendment of pre-effective-date financing statement.

(a) Definitions.—Refer to subsection (f).

(b) Applicable law.—After the 2013 Revision takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this division as amended by the 2013 Revision. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule.—Except as otherwise provided in subsection (d), if the law of this Commonwealth governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the 2013 Revision takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in section 9501 (relating to filing office);

(2) an amendment is filed in the office specified in section 9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9806(c) (relating to when initial financing statement suffices to continue effectiveness of financing statement); or

(3) an initial financing statement that provides the information as amended and satisfies section 9806(c) is filed in the office specified in section 9501.

(d) Method of amending: continuation.—If the law of this Commonwealth governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 9805(c) and (e) (relating to effectiveness of action taken before effective date) or 9806.

¹section 9515 (a) through (e)" in enrolled bill.

(e) Method of amending: additional termination rule.—Whether or not the law of this Commonwealth governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this Commonwealth may be terminated after the 2013 Revision takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 9806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this division as amended by the 2013 Revision as the office in which to file a financing statement.

(f) Definition.—As used in this section, the term "pre-effective-date financing statement" means a financing statement filed before the 2013 Revision takes effect.

§ 9808. Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

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

(2) the filing is necessary under this part:

(i) to continue the effectiveness of a financing statement filed before the 2013 Revision takes effect; or

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

§ 9809. Priority.

The 2013 Revision determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the 2013 Revision takes effect, this division as it existed before amendment determines priority.

Section 10. Section 5323(b) of Title 30 is amended to read:

§ 5323. Content and effect of certificate of title.

* * *

(b) Certificate as evidence and notice.—A certificate of title issued by the commission is prima facie evidence of the facts appearing on the certificate. Except as otherwise provided in 13 Pa.C.S. §§ 9311(d) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties), 9315(c) and (d) (relating to secured party's rights on disposition of collateral and in proceeds) and 9316(d) and (e) (relating to **[continued perfection of security interest following] effect of change in governing law**), the certificate shall be adequate notice to the Commonwealth, creditors, subsequent lienholders and purchasers that a lien against the boat exists.

Section 11. Sections 1137 and 7712.8(a) of Title 75 are amended to read:

§ 1137. Subchapter exclusive for perfecting security interest.

The method provided in this subchapter for perfecting and giving notice of security interests is exclusive, except as otherwise provided in 13 Pa.C.S. §§ 9315 (relating to secured party's rights on disposition of collateral and in proceeds) and 9316(d) and (e) (relating to **[continued perfection of security interest following] effect of change in governing law**).

§ 7712.8. Perfection of security interest in a snowmobile or ATV.

(a) Applicability of section.—Except as otherwise provided in 13 Pa.C.S. §§ 9311(d) (relating to perfection of security interests in property subject to certain statutes, regulations and treaties), 9315(c) and (d) (relating to secured party's rights on disposition of collateral and in proceeds) and 9316(d) and (e) (relating to **[continued perfection of security interest following]** *effect of* change in governing law), this section provides the exclusive method of perfecting a security interest in a snowmobile or ATV for which a certificate of title is required under this subchapter.

* * *

Section 12. In order to implement the amendment of 13 Pa.C.S. § 9503, the Department of State and the Department of Transportation shall coordinate development and maintenance of electronic systems for entering and searching data.

Section 13. This act shall take effect July 1, 2013.

APPROVED—The 27th day of June, A.D. 2013

TOM CORBETT