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Bill Analysis
Legislative Service Commission

Sub. S.B. 74

124th General Assembly
(As Reported by H. Civil & Commercial Law)

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BILL SUMMARY

- Establishes that R.C. Chapter 1309. applies to (1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract, (2) an agricultural lien, (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes, (4) a consignment, (5) a security interest arising under specified sections of the Uniform Commercial Code, and (6) specified security interests of a collecting bank, or an issuer's or nominated person's security interest in a document presented under a letter of credit.
- Consolidates and revises the definitions used within R.C. Chapter 1309. and also proposes new definitions; in particular, the definitions of "agricultural lien," "collateral," "commercial tort," "consignment," "payment intangible," and "promissory note" reflect the expanded scope of R.C. Chapter 1309.
- Modifies the rules regarding interstate secured transactions and which state's laws apply to perfection, the effect of perfection, and the priority of security interests by providing that the general rule is the state that is the location of the debtor is the law that governs perfection, the effect of perfection, and priority of security interests.
- Permits several different methods of perfection for various forms of collateral, including control and possession, as well as continuing allowing the filing of a financing statement.
- Establishes transition rules governing pre-effective date transactions, earlier perfected security interests, earlier attached but unperfected security interests, the effect of actions taken before the bill's effective

date, the filing of a financing statement prior to the bill's effective date, using an initial financing statement in lieu of a continuation statement, and the effect of transition rules on priority.

- Eliminates the restriction on the rule that any description of personal or real property is sufficient whether or not it is specific if it reasonably identifies what it describes that provides that the rule applies only for purposes of R.C. Chapter 1309.
- Generally increases the fees for filing and indexing a record, and furnishing filing data in the office of the Secretary of State in conformity with the fee structure in Am. Sub. H.B. 94 of the 124th General Assembly.
- Makes limited modifications to the general provisions and the provisions governing sales, letters of credit, investment securities, and leases in the Uniform Commercial Code (as adopted in Ohio) and the provisions governing motor vehicle repossessions, and prescribes the effects of securitization transactions of financial institutions.
- Declares an emergency.

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CONTENT AND OPERATION

Background on current R.C. Chapter 1309. (Article 9 of the Uniform Commercial Code)

R.C. Chapter 1309. (Article 9 of the Uniform Commercial Code) applies, with several exceptions, to contractual security interests in personal property and fixtures (both tangible and intangible). In most situations, the debtor purchases something from a creditor or secured party without paying immediately. The creditor or secured party wants to rely on something other than the debtor's promise to ensure payment. A security interest is an interest in personal property or fixtures that secures payment or performance of an obligation. It is a limited right in specific personal property, or collateral, of the debtor that allows the creditor or secured party to take the property if the debtor fails to fulfill the credit obligation. A security interest is effective between the parties when certain steps are taken to attach the interest. Once the interest attaches, as between the parties, if the debtor defaults on the payments, the creditor has a right to take the collateral to satisfy the obligation. However, attachment does not provide the creditor with any rights with respect to third parties who may also have an interest in the same collateral. The creditor must take additional steps to perfect the security interest in order for the creditor to gain rights over these third parties. Perfection serves as a form of notice that the creditor has a security interest in the collateral. Because of this notice, the creditor has rights in the collateral superior to certain third parties who may also have an interest in the same collateral. There are rules of priority to determine whose rights are superior. R.C. Chapter 1309. also covers the sales of accounts, contract rights, and chattel paper.

Existing R.C. Chapter 1309. does not apply to any of the following:

(1) A security interest subject to any statute of the United States such as the "Ship Mortgage Act, 1920," to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) A lien given by statute or other rule of law for services or materials except as provided in R.C. 1309.29 on priority of such liens;

(3) A transfer of a claim for wages, salary, or other compensation of an employee;

(4) A transfer by a governmental subdivision or agency;

(5) A sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to

an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a pre-existing indebtedness;

(6) A transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds under R.C. 1309.25 and priorities in proceeds under R.C. 1309.31;

(7) A right represented by a judgment, other than a judgment taken on a right to payment which was collateral;

(8) Any right of set-off;

(9) Except to the extent that provision is made for fixtures in R.C. 1309.32, the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;

(10) A transfer in whole or in part of any claim arising out of a tort;

(11) A transfer of an interest in any deposit account, R.C. 1309.01(A)(5), except as provided with respect to proceeds under R.C. 1309.25, and priorities in proceeds under R.C. 1309.31;

(12) A transfer of an interest in a letter of credit other than the rights to proceeds of a letter of credit.

Background on R.C. Chapter 1309. in the bill (revised Article 9 of the Uniform Commercial Code)

The bill makes many revisions to R.C. Chapter 1309. These revisions include the scope of the Chapter, perfection, choice of law, the system for filing a financing statement, consumer transactions, and default and enforcement.

Scope

The bill expands the scope of R.C. Chapter 1309. The types of collateral in which a security interest can be taken by a creditor under R.C. Chapter 1309. increases over those available in current R.C. Chapter 1309. Certain types of transactions that were not included in current R.C. Chapter 1309. are covered by the chapter under the bill. The types of collateral added under the bill include the following:

(1) Sales of payment intangibles and promissory notes;

(2) Security interests created by governmental debtors;

- (3) Health insurance receivables;
- (4) Consignments;
- (5) Commercial tort claims.

Nonpossessory, statutory agricultural liens are included in the chapter for the determination of perfection and priority.

Perfection

Filing a financing statement continues to be the most common method to perfect a security interest in most types of property under the bill. The bill makes it clear that filing a financing statement will perfect a security interest even if there is another method of perfection. Under the bill, "control" is the method of perfection for letter-of-credit rights, deposit accounts, and investment property. A creditor has "control" when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest.

Choice of law

With regards to interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection, and the priority of security interests. Under the bill, the general rule is the state that is the location of the debtor is the law that governs the perfection, effect of perfection, and priority of security interests. The bill also provides that if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration.

The filing system

The bill creates a centralized filing system; that is, one location in every state where a person can file a financing statement. Under the bill, the only local filing of a financing statement occurs with the real estate records for fixtures. Fixtures are items of personal property that physically become part of the real estate and are treated as a part of the real estate until severed from it.

Consumer transactions

The bill makes a clearer distinction between transactions in which the debtor is a consumer than in current R.C. Chapter 1309. Enforcement of a

security interest that is included in a consumer transaction is handled differently under the bill as well. Examples of consumer provisions include the following:

- (1) A consumer cannot waive redemption rights in a financing statement.
- (2) A consumer buyer of goods who pre-pays in whole or in part has an enforceable interest in the purchased goods and may obtain the goods as a remedy.
- (3) A consumer is entitled to disclosure of the amount of any deficiency assessed against the consumer as well as the method for calculating the deficiency.
- (4) A secured creditor may not accept collateral as partial satisfaction of consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor.

Default and enforcement

The bill includes new rules addressing "secondary" obligors, new rules for the new kinds of property subject to a security interest, new rules for the interests of subordinate creditors with security interests in the same collateral, and new rules for aspects of enforcement when the debtor is a consumer debtor. These specific new rules include the following:

- (1) A secured party must notify a secondary obligor when there is a default, and a secondary obligor generally may not waive rights by becoming a secondary obligor.
- (2) A secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale.
- (3) Junior secured creditors and lienholders who have filed financing statements must be notified when a secured party repossesses the collateral.
- (4) If a secured party sells the collateral at a low price to an inside buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

PART 1--GENERAL PROVISIONS (MINUS DEFINITIONS)

Title and numbering

The bill notes that R.C. Chapter 1309. may be cited as the "Uniform Commercial Code, secured transactions." Additionally, R.C. Chapter 1309. uses the numbering system of the National Conference of Commissioners on Uniform

State Laws. The numbering system is unlike the standard Revised Code numbering system in that the digits to the right of the decimal point are sequential and not supplemental to any preceding Revised Code section. (R.C. 1309.101.)

Applicability

The bill declares that, except as otherwise provided, R.C. Chapter 1309. applies to all of the following (R.C. 1309.109(A)):

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) An agricultural lien;
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) A consignment;
- (5) A security interest arising under specified sections of the Uniform Commercial Code (as adopted in Ohio);
- (6) Specified security interests of a collecting bank, or an issuer's or nominated person's security interest in a document presented under a letter of credit.

As under existing law, the bill provides that the application of R.C. Chapter 1309. to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply (R.C. 1309.109(B)).

Nonapplicability

R.C. Chapter 1309. specifically does not apply to the extent that federal law preempts the Secured Transactions Law (R.C. 1309.109(C)(1)).

The bill specifies that R.C. Chapter 1309. does not apply to the extent that the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under existing law (R.C. 1309.109(C)(2)).

R.C. Chapter 1309. does not apply to any of the following (R.C. 1309.109(D)):

- (1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, including agricultural commodity liens, agricultural product liens, mortgages under R.C. 1701.66, or liens on watercraft;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but that it applies with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, with certain exceptions concerning the effectiveness of rights of recoupment or set-off against deposit accounts and defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents under a lease, with certain exceptions for liens on real property, fixtures, fixture filings, and security agreements covering personal and real property;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, with certain exceptions with respect to proceeds and priorities in proceeds;

(13) An assignment of a deposit account in a consumer transaction, with certain exceptions with respect to proceeds and priorities in proceeds;

(14) A transfer by a government, state, or governmental unit.

Security interests under Sales and Lease Law

Under the bill, certain security interests arising outside of R.C. Chapter 1309. are nonetheless subject to it (R.C. 1309.110). Specifically, all of the following are subject to R.C. Chapter 1309.: a security interest involving title to goods under R.C. 1302.42, a seller's reserved security interest under R.C. 1302.49, a buyer's security interest in rejected goods under R.C. 1302.85, and a lessee's interest in goods under R.C. 1310.54. However, until the debtor obtains possession of the goods, all of the following apply:

(1) The security interest is enforceable even if the general evidentiary requirements have not been satisfied.

(2) No filing is required to perfect the security interest.

(3) The rights of the secured party after default by the debtor are governed by the Sales or Lease Law of the Uniform Commercial Code (R.C. Chapter 1302. or 1310.).

(4) The security interest has priority over a conflicting security interest created by the debtor.

PART 1--DEFINITIONS

The bill generally consolidates the definitions used within R.C. Chapter 1309. into one section. The bill revises numerous definitions contained in existing law and also proposes new definitions. In particular, the definitions of "agricultural lien," "collateral," "commercial tort," "consignment," "payment intangible," and "promissory note" reflect the expanded scope of R.C. Chapter 1309. The new definitions, and those that are substantially revised, include the following terms (R.C. 1309.102(A)):

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account" has been expanded and revised. It is no longer limited to rights to payment relating to goods or services. It includes many types of receivables, notably health-care insurance receivables, but it does not include any of the following: rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Accounting" means a record that is authenticated by a secured party, that indicates the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record, and that identifies the components of the obligations in reasonable detail. Essentially, this is the information that a debtor is entitled to request from a secured party.

(4) "Agricultural lien" means an interest, other than a security interest, in farm products if the interest secures payment or performance of an obligation for either goods or services furnished in connection with a debtor's farming operation, or rent on real property leased by a debtor in connection with its farming operation. An agricultural lien is created by statute in favor of a person who in the ordinary course of business, furnished goods or services to a debtor in connection with the debtor's farming operation or leased real property to a debtor in connection with the debtor's farming operation.

The effectiveness of an agricultural lien does not depend on the person's possession of the personal property.

(5) "As-extracted collateral" means oil, gas, or other minerals that are subject to a security interest if the security interest is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted. "As-extracted collateral" also means accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction. Before extraction, oil, gas, and other minerals are treated as real property, not goods.

(6) "Authenticate" means either to sign or to 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 adopt or accept a record.

(7) "Bank" means an organization that is engaged in the business of banking. "Bank" includes savings banks, savings and loan associations, credit unions, and trust companies.

(8) "Certificate of title" means 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.

(9) "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by a record. "Chattel paper" includes records that

evidence a monetary obligation and a security interest in specific goods and software used in the goods.

(10) "Collateral" means the property subject to a security interest or agricultural lien, including proceeds to which a security interest attaches, accounts, chattel paper, payment intangibles, and promissory notes that have been sold, and goods that are the subject of a consignment.

(11) "Commercial tort claim" means a claim arising in tort if the claimant is an organization or the claimant is an individual and the claim arose in the course of the claimant's business or profession and does not include damages arising out of personal injury to or the death of an individual.

(12) "Communicate" means to send a written or other tangible record, to transmit a record by any means agreed upon by the persons sending and receiving the record, or, in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(13) "Consignee" means a merchant to whom goods are delivered in a consignment.

(14) "Consignment" means any transaction in which a person delivers goods to a merchant for the purpose of sale, provided (1) the merchant deals in goods of that kind under a name other than the name of the person making delivery, is not an auctioneer, and is not generally known by its creditors to be substantially engaged in selling the goods of others, and (2) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery, the goods are not consumer goods immediately before delivery, and the transaction does not create a security interest that secures an obligation.

(15) "Consignor" means a person who delivers goods to a consignee in a consignment.

(16) "Consumer debtor" means a debtor in a consumer transaction.

(17) "Consumer-goods transaction" means a consumer transaction in which an individual incurs an obligation primarily for personal, family, or household purposes and a security interest in consumer goods secures the obligation.

(18) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(19) "Consumer transaction" means a transaction, including a transaction in consumer goods, in which all of the following apply: (a) an individual incurs an

obligation primarily for personal, family, or household purposes, (b) a security interest secures the obligation, and (c) the collateral is held or acquired primarily for personal, family, or household purposes.

(20) "Continuation statement" means an amendment of a financing statement that identifies, by its file number, the initial financing statement to which it relates and also indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(21) "Debtor" means (a) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor, (b) a seller of accounts, chattel paper, payment intangibles, or promissory notes, or (c) a consignee.

(22) "Electronic chattel paper" means chattel paper evidenced by a record consisting of information stored in an electronic medium.

(23) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(24) "Goods" generally means all things that are movable when a security interest attaches. "Goods" includes all of the following: (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes.

"Goods" also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program under either of the following situations: (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

"Goods" does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded or accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(25) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. It includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(26) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided.

(27) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. "Instrument" does not include investment property, letters of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(28) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(29) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. "Letter-of-credit right" does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(30) "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Manufactured home" includes any structure that meets all of the stated requirements except the size requirements if the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under federal law.

(31) "Manufactured-home transaction" means a secured transaction that creates a purchase-money security interest in a manufactured home (other than a manufactured home held as inventory) or in which a manufactured home (other than a manufactured home held as inventory) is the primary collateral for the transaction.

(32) "New debtor" means a person that becomes bound as debtor by a security agreement previously entered into by another person.

(33) "New value" means money; money's worth in property, services, or new credit; or release by a transferee of an interest in property previously transferred to the transferee. "New value" does not include an obligation substituted for another obligation.

(34) "Obligor" means a person who, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, one of the following applies: (i) the person owes payment or other performance of the obligation, (ii) the person has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) the person is otherwise accountable in whole or in part for payment or other performance of the obligation.

"Obligor" does not include issuers or nominated persons under a letter of credit.

(35) "Original debtor," except as otherwise specified, means a person who, as debtor, entered into a security agreement to which a new debtor has become bound.

(36) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(37) "Person related to," with respect to an individual, means any of the following: (i) the spouse of the individual, (ii) a brother, brother-in-law, sister, or sister-in-law of the individual, (iii) an ancestor or lineal descendant of the individual or the individual's spouse, or (iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(38) "Person related to," with respect to an organization, means any of the following: (i) a person directly or indirectly controlling, controlled by, or under common control with the organization, (ii) an officer or director of, or a person performing similar functions with respect to, the organization, (iii) an officer or director of, or a person performing similar functions with respect to, a person described in (i) above, (iv) the spouse of an individual described in (i), (ii), or (iii) above, or (v) an individual who is related by blood or marriage to an individual described in (i), (ii), (iii), or (iv) above and shares the same home with the individual.

(39) "Proceeds" except as otherwise specified, means any of the following property: (i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral, (ii) whatever is collected on, or distributed on account of, collateral, (iii) rights arising out of collateral, (iv) to the extent of the value of

collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral, or (v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the collateral.

(40) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(41) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures.

(42) "Public-finance transaction" means a secured transaction in connection with which all of the following apply: (i) debt securities are issued, (ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years, and (iii) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(43) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(44) "Registered organization" means an organization 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.

(45) "Secondary obligor" means an obligor to the extent that either of the following applies: (i) the obligor's obligation is secondary, or (ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(46) "Secured party" means any of the following: (i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding, (ii) a person that holds an agricultural lien, (iii) a consignor, (iv) a person to whom accounts, chattel paper, payment intangibles, or promissory notes have been sold, (v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided, or (vi) a person who

holds a security interest arising under R.C. 1302.42, 1302.49, 1302.85, 1304.20, 1305.18, or 1310.54.

(47) "Send," in connection with a record or notification, means either of the following: (i) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances, or (ii) to cause the record or notification to be received within the time that it would have been received if properly sent under (i) above.

(48) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. "Software" does not include a computer program that is included in the definition of goods.

(49) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

(51) "Tangible chattel paper" means chattel paper evidenced by a record consisting of information that is inscribed on a tangible medium.

(52) "Termination statement" means an amendment of a financing statement that identifies, by its file number, the initial financing statement to which it relates and indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(53) "Encumbrance" means a right, other than an ownership interest, in real property. "Encumbrance" includes mortgages and other liens on real property.

The bill notes 24 terms that apply in R.C. Chapter 1309. but are defined in other Revised Code sections. Additionally, the terms and principles of construction and interpretations set forth in R.C. 1301.01 to 1301.14 apply to R.C. Chapter 1309. (R.C. 1309.102(B) and (C).)

Purchase-money security interest

Under R.C. 1309.309, a purchase-money security interest (PMSI) in consumer goods is perfected when it attaches. R.C. 1309.317 and 1309.324 provide special priority rules for PMSIs in several contexts. PMSIs arise from a security interest in goods, including fixtures and software. For inventory only, a

PMSI in inventory remains a PMSI to the extent that it secures a purchase-money obligation for other inventory. (R.C. 1309.103(B).)

A security interest in software is a PMSI to the extent that the secured party finances the software and the related equipment in which the software will be used in an integrated transaction. (R.C. 1309.103(C).) Consignments are treated as a PMSI (R.C. 1309.103(D)).

The terms "purchase-money collateral" and "purchase-money obligation" are essential to the description of what constitutes a PMSI. The bill defines "purchase-money collateral" as goods or software that secure a purchase-money obligation incurred with respect to that collateral. "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used. (R.C. 1309.103(A).)

In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a PMSI depends on the application of a payment to a particular obligation, the payment must be applied in one of the following manners:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment;

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order: (a) first, to obligations that are not secured, (b) next, if more than one obligation is secured, to obligations secured by PMSIs in the order in which those obligations were incurred. (R.C. 1309.103(E).)

In a transaction other than a consumer-goods transaction, a PMSI does not lose its status as a PMSI, even if (1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation, (2) collateral that is not purchase-money collateral also secures the purchase-money obligation, or (3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured. Also in a transaction other than a consumer-goods transaction, a secured party claiming a PMSI has the burden of establishing the extent to which the security interest is a PMSI. (R.C. 1309.103(F) and (G).)

For consumer-goods transactions, courts may determine the proper rules of the extent to which a security interest is a PMSI. For such transactions, courts may continue to apply established approaches. (R.C. 1309.103(H).)

Control--of a deposit account

A secured party may perfect a security interest in a deposit account only by "control." A secured party has control of a deposit account if any of the following apply (R.C. 1309.104):

(1) The secured party is the bank with which the deposit account is maintained.

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the account without further consent by the debtor.

(3) The secured party becomes the bank's customer with respect to the deposit account.

A secured party that satisfies the above has control of a deposit account, even if the debtor retains the right to direct the disposition of funds from the deposit account. (R.C. 1309.104.)

Control--of electronic chattel paper

A security interest in electronic chattel paper may be perfected by filing or by control. A secured party has control of electronic chattel paper if the record comprising the chattel paper is created, stored, and assigned so that all of the following apply (R.C. 1309.105):

(1) A single authoritative copy of the record exists that is unique, identifiable, and, except as otherwise provided, unalterable.

(2) The authoritative copy identifies the secured party as the assignee of the record.

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

(4) Copies or revisions that add or change an identified assignee of the authoritative copy may be made only with the participation of the secured party.

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Control--of investment property

A secured party can perfect a security interest in investment property by filing a financing statement, by obtaining control of the investment property, or by delivery of a security certificate. "Investment property" includes a "security entitlement," a "security account," a "security" (whether certificated or uncertificated), and a commodity contract or commodity account. Continuing law generally establishes when a person has control of a certificated security, uncertificated security, or security entitlement. (R.C. 1308.24.)

Under the bill, a secured party has control over a commodity contract if the secured party is the commodity intermediary with which the commodity contract is carried or by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. (R.C. 1309.106(B).)

A secured party has control over a securities account or commodity account if the secured party has control of all security entitlements or commodity contracts carried in the securities account or commodity account (R.C. 1309.106(C)).

Control--of a letter of credit

Whether a secured party has control of a letter-of-credit may determine the secured party's priority as against competing secured parties. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit otherwise under applicable law or practice. (R.C. 1309.107.)

Sufficiency of description

Under existing law, for purposes of R.C. Chapter 1309., any description of personal or real property is sufficient whether or not it is specific if it reasonably identifies what it describes. The bill eliminates the restriction that this rule on the description of personal or real property applies only to R.C. Chapter 1309. (R.C. 1309.108.)

Except in regard to certain investment property, a description of collateral reasonably identifies the collateral if it identifies the collateral by: (1) specific listing, (2) category, (3) except in regard to consumer investment property and commercial tort claims, a type of collateral defined in specified provisions of the Uniform Commercial Code (as adopted in Ohio), (4) quantity, (5) computational or allocational formula or procedure, or (6) except as otherwise provided below, any other method, if the identity of the collateral is objectively determinable. (R.C. 1309.108(B).)

Under the bill, a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral (R.C. 1309.108(C)).

Except in regard to consumer investment property and commercial tort claims, a description of a security entitlement, securities account, or commodity account is sufficient if it describes the collateral by those terms or as investment property; or, the underlying financial asset or commodity contract (R.C. 1309.108(D)).

A description only by type of collateral defined in specified provisions of the Uniform Commercial Code (as adopted in Ohio) is an insufficient description of a commercial tort claim or, in a consumer transaction, of consumer goods, a security entitlement, a securities account, or a commodity account (R.C. 1309.108(E)).

PART 2--EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT; RIGHTS OF PARTIES

Effectiveness of a security agreement

Except as otherwise provided in the Uniform Commercial Code (as adopted in Ohio in R.C. Chapters 1301., 1302., 1303., 1304., 1305., 1306., 1307., 1308., 1309., and 1310.), a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors (R.C. 1309.201(A)).

Certain transactions, although subject to the Secured Transactions Law, are also subject to any applicable law that establishes a different rule for consumers and to the Retail Installment Sales Law (R.C. Chapter 1317.) and the Small Loans Law (R.C. 1321.01 to 1321.33 and 1321.99(A), (B), and (C)). In the event of conflict between the Secured Transactions Law and those other specified provisions, the other specified provisions prevail. Failure to comply with those provisions has only the effect provided in those provisions. (R.C. 1309.201(B) and (C).) The Secured Transactions Law does not validate any rate, charge,

agreement, or practice that violates a rule of law, statute, or regulation in the Retail Installment Sales Law and the Small Loans Law nor does it extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it (R.C. 1309.201(D)).

The bill declares that, except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, each provision of the Secured Transactions Law with regard to rights and obligations applies whether title to collateral is in the secured party or in the debtor (R.C. 1309.202).

Attachment--generally

Under the bill, a security interest attaches to collateral only when it becomes enforceable against the debtor, unless an explicit agreement postpones the time of attaching (R.C. 1309.203(A)). Except as otherwise provided, a security interest is enforceable against the debtor and third parties with respect to the collateral only if all of the following apply (R.C. 1309.203(B)):

(1) Value has been given.

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(3) One of the following conditions is met: (a) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned, (b) the collateral is not a certificated security and is in the possession of the secured party pursuant to the debtor's security agreement, (c) the collateral is a certificated security in registered form, and the security certificate has been delivered to the secured party pursuant to the debtor's security agreement, or (d) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control pursuant to the debtor's security agreement.

The standards under which a security interest is enforceable against the debtor and third parties are subject to the security interest of a collecting bank, the security interest of a letter-of-credit issuer or nominated person, a security interest arising under the Sales and Lease Law (R.C. Chapter 1302. or 1310.), and security interests in investment property (R.C. 1309.203(C)).

Debtors

Under the bill, a person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by

contract, either of the following applies: (1) the security agreement becomes effective to create a security interest in the person's property, or (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person (R.C. 1309.203(D)).

If a new debtor becomes bound as debtor by a security agreement entered into by another person, the agreement satisfies the standards under which a security interest is enforceable against the debtor and third parties with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement. Also, another agreement is not necessary to make a security interest in the property enforceable. (R.C. 1309.203(E).)

Collateral

The attachment of a security interest in collateral gives the secured party the rights to proceeds and is also attachment of a security interest in a supporting obligation for the collateral. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property also is attachment of a security interest in the security interest, mortgage, or other lien.

The attachment of a security interest in a securities account also is attachment of a security interest in the security entitlements carried in the securities account, and the attachment of a security interest in a commodity account is attachment of a security interest in the commodity contracts carried in the commodity account. (R.C. 1309.203(F), (G), (H), and (I).)

After-acquired property and future advances

Generally, a security agreement may create or provide for a security interest in after-acquired collateral. However, no security interest attaches under an after-acquired property clause to consumer goods when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value. No security interest attaches under an after-acquired property clause to a commercial tort claim. (R.C. 1309.204(A) and (B).)

Under the bill, a security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with future advances or other value, whether or not the advances or value are give pursuant to commitment (R.C. 1309.204(C)).

Use or disposition of collateral

A security interest is not invalid or fraudulent against creditors solely because any of the following apply (R.C. 1309.205):

(1) The debtor has the right or ability to use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods; collect, compromise, enforce, or otherwise deal with collateral; accept the return of collateral or make repossessions; or use, commingle, or dispose of proceeds.

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

Broker's lien

A security interest in favor of a securities intermediary attaches to a person's security entitlement if the person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary. Under these circumstances, the customer has acquired a security entitlement prior to payment, and the securities intermediary has a security interest in the entitlement holder's security entitlement. The security interest secures the person's obligation to pay for the financial asset. (R.C. 1309.206(A) and (B).)

A security interest in favor of a person who delivers a certificated security or other financial asset represented by a writing attaches to the certificated security or other financial asset if: (1) the security or other financial asset in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment, (2) the certificated security interest or other financial asset is delivered under an agreement between persons in the business of dealing with certificated securities or financial assets in writing, and (3) the agreement calls for delivery against payment. The security interest secures the obligation to make payment for the delivery. (R.C.1309.206(C) and (D).)

Rights and duties of secured party

In general, a secured party must use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed. (R.C. 1309.207(A).)

Generally, when collateral is in the secured party's possession, all of the following apply (R.C. 1309.207(B)):

(1) Reasonable expenses, including the cost of any insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral.

(2) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage.

(3) The secured party must keep the collateral identifiable but fungible collateral may be commingled.

(4) The secured party may use or operate the collateral for the purpose of preserving the collateral or its value, as permitted by an order of a court of appropriate jurisdiction or, except in the case of consumer goods, as agreed by the debtor.

A secured party having possession of collateral or control of collateral generally may hold as additional security any proceeds, except money or funds, received from the collateral. The secured party must apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor. The secured party may create a security interest in the collateral. (R.C. 1309.207(C).)

If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, the requirement to use reasonable care of collateral does not apply unless the secured party is entitled under an agreement to charge back uncollected collateral and otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral. The other provisions discussed above for the use and care of collateral also do not apply. (R.C. 1309.207(D).)

For cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value, special duties apply (R.C. 1309.208(A)). These duties fall on a secured party who has control of a deposit account, electronic chattel paper, investment property, or a letter-of-credit right. Within ten days after receiving an authenticated demand by the debtor, a secured party shall do all of the following that are applicable (R.C. 1309.208(B)):

(1) A secured party having control of a deposit account must send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party.

(2) A secured party having control of a deposit account must pay the debtor the balance on deposit in the deposit account or transfer the balance on deposit into a deposit account in the debtor's name.

(3) A secured party, other than a buyer, having control of electronic chattel paper must: (a) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian, (b) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor, and (c) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.

(4) A secured party having control of investment property must send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.

(5) A secured party having control of a letter-of-credit right must send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

Special duties also apply if there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value. Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee an authenticated record that releases the account debtor from any further obligation to the secured party. These duties do not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible. (R.C. 1309.209.)

Requests from debtor

Generally, a debtor may request three types of information by submitting three types of requests of a secured party. A secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, must comply with any of the following requests within 14 days after receipt of the request (R.C. 1309.210(B)):

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting;

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time must comply with the request within 14 days after receipt by sending to the debtor an authenticated record disclaiming any interest in the collateral and, if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's security interest in the collateral.

A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when the person receives the request, and claimed an interest in the obligations at an earlier time must comply with the request within 14 days after receipt by sending to the debtor an authenticated record disclaiming any interest in the obligations and, if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations. (R.C. 1309.210(C), (D), and (E).)

A debtor is entitled without charge to one response to a request during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response. (R.C. 1309.210(F).)

The bill defines (1) "request," (2) "request for an accounting," (3) "request regarding a list of collateral," and (4) "request regarding a statement of account." (R.C. 1309.210(A).)

PART 3--PRIORITY

Law governing perfection and priority of security interest

The bill substantially modifies the choice-of-law rules for the perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral. Under the bill, as a general rule, there is one choice-of-law rule that applies to most types of collateral; that is, the local law of the jurisdiction where

the debtor is located governs perfection with respect to most types of tangible and intangible collateral. (R.C. 1309.301(A).) This general rule is subject to several exceptions. The bill provides that, with respect to possessory security interests, the local law of the jurisdiction in which the collateral is located governs perfection. The bill removes the existing provision that perfection and the effect of perfection or nonperfection of a security interest in collateral is governed by the law of the jurisdiction where the collateral is when the *last event* occurs on which is based the assertion that the security interest is perfected or unperfected. (R.C. 1309.301(B).)

The bill also provides that, generally, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs all of the following (R.C. 1309.301(C)):

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

(B) Perfection of a security interest in timber to be cut;

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

The bill specifies that the jurisdiction in which a wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral (R.C. 1309.301(D)).

Law governing perfection and priority of agricultural liens

The bill provides that while farm products are located in a jurisdiction, the local law of that jurisdiction governs the perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products (R.C. 1309.302).

Law governing perfection and priority of security interests in goods covered by a certificate of title

R.C. 1309.303 applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor. The bill provides that goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction. (R.C. 1309.303(A) and (B).)

The bill also provides that the local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title (R.C. 1309.303(C)).

Law governing perfection and priority of security interests in deposit accounts

Under the bill, the local law of a bank's jurisdiction governs perfection and priority in deposit accounts. The bill contains rules to determine a bank's jurisdiction for the purposes of these provisions. The rules are the following (R.C. 1309.304(B)):

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for the purposes of R.C. Chapters 1301. to 1310., that jurisdiction is the bank's jurisdiction.

(2) If (1), above, does not apply, and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither (1) nor (2), above, applies, and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If neither (1), (2), nor (3), above, applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer account is located.

(5) If none of the above apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Law governing perfection and priority of security interests in investment property

The bill retains the rule that the law, including the conflict of law rules, of the jurisdiction of the organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities. It also expands existing law to include the choice-of-law rules for security interests in certificated securities, security entitlements, security accounts, commodity contracts, and commodity accounts. The choice-of-law rules for the

perfection, the effect of perfection or nonperfection, and priority for these types of collateral are as follows (R.C. 1309.305(A)):

(1) For certificated securities, the local law of the jurisdiction in which the certificate is located governs.

(2) For uncertificated securities, the local law of the issuer's jurisdiction governs.

(3) For security entitlements and security accounts, the local law of the security intermediary's jurisdiction governs.

(4) For commodity contracts and commodity accounts, the local law of the commodity intermediary's jurisdiction governs.

The bill provides an exception of the general rule above. Perfection of a security interest in investment property by filing, automatic perfection of a security interest in investment property created by a debtor who is a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account of a debtor who is a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. (R.C. 1309.305(C).)

Law governing perfection and priority of security interests in letter-of-credit rights

The bill provides the choice-of-law rules for the perfection and priority of security interests in letter-of-credit rights, other than a security interest perfected only under R.C. 1309.308(D). Under the bill, the law of the issuer's or nominated person's jurisdiction controls perfection and priority of a security interest in letter-of-credit rights, but only if the issuer's or nominated person's jurisdiction is a state. (R.C. 1309.306(A).)

An issuer's or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to letter-of-credit rights under the law governing letters of credit (R.C. 1309.306(B) and 1305.15).

Location of the debtor

Generally, a debtor who is an individual is located at the individual's location, a debtor that is an organization and has only one place of business is located at its place of business, and a debtor that is an organization and has more than one place of business is located at its chief executive office. These rules only apply if a debtor's residence, place of business, or chief executive office is located

in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If the general rules for the location of the debtor do not apply, the debtor is located in the District of Columbia. The bill also provides that a person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction where the debtor was located. (R.C. 1309.307(B), (C), and (D).)

The bill also provides that a registered organization that is organized under the law of a state is located in that state. Generally, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located in one of the following (R.C. 1309.307(F)):

(1) The state that the law of the United States designates, if the law designates a state of location;

(2) The state that 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;

(3) The District of Columbia, if neither (1) nor (2) above apply.

A registered organization continues to be located in the jurisdiction specified above notwithstanding the suspension, revocation, forfeiture, or lapse of the registered organization's status in its jurisdiction of organization or the dissolution, winding up, or cancellation of the existence of the registered organization. (R.C. 1309.307(G).)

A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state (R.C. 1309.307(G)).

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

Generally, a security interest is perfected if it has attached and all applicable requirements for perfection have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

Under the bill, an agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in the bill have been satisfied.

An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective. A security interest in an agricultural lien is perfected continuously if it is originally perfected by one method under the bill and is later perfected by another method under the bill without an intermediate period when it is not perfected.

The bill also provides for the automatic perfection of a security interest in a supporting obligation for collateral if the security interest in the collateral is perfected, and the automatic perfection of a security interest, mortgage, or other lien on personal or real property securing the right to payment or performance if the security interest in the right to payment or performance is perfected.

The bill provides that perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account and that perfection of a security interest in a commodity account also perfects a security interest in all commodity contracts carried in the commodity account. (R.C. 1309.308.)

Security interests perfected upon attachment (Automatic perfection)

Under current law, certain types of security interests, by indirection do not require the filing of a financing statement in order to be perfected. They are instead perfected upon attachment. (Existing R.C. 1309.112(D), 1309.113, and 1309.21(A)).

The bill divides current R.C. 1309.21 into several separate sections. It explicitly provides for perfection upon attachment for the following security interests (R.C. 1309.309):

- (1) Generally, a purchase money security interest in consumer goods;
- (2) An assignment of accounts or payment intangibles that does not of itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) A sale of a payment intangible;
- (4) A sale of a promissory note;
- (5) A security interest created by the assignment of a health-care insurance receivable to the provider of the health-care goods or services;
- (6) A security interest arising under specified provisions of the Sales Law, until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank under the bill (R.C. 1304.20);

(8) A security interest of an issuer or nominated person arising under the bill (R.C. 1305.18);

(9) A security interest arising in the delivery of a financial asset as provided in the bill under R.C. 1309.206;

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee;

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

The bill revises the perfection rules for purchase money security interests. Under current law, a purchase money security interest in consumer goods is perfected upon attachment, but a fixture filing is required for a priority over conflicting interests in fixtures to the extent provided in existing R.C. 1309.32. The bill modifies this rule by providing that no filing or other applicable step is required to perfect a purchase money security interest in consumer goods, other than goods, such as automobiles, that are subject to a statute or treaty described in the bill (R.C. 1309.309(A)).

Current law allows for automatic perfection for an assignment of accounts that does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor. The bill affords automatic perfection to certain assignments of payment intangibles as well as accounts. (R.C. 1309.309(B).)

Generally, the bill provides the existing general rule for the perfection of a security interest; that is, by filing a financing statement. It applies this rule to agricultural liens. The bill lists the security interests for which filing is not required as a condition of perfection because they are perfected automatically upon attachment or upon the occurrence of another event, because they are perfected under the law of another jurisdiction, or because they are perfected by another method, such as by the secured party's taking possession or control. (R.C. 1309.310.)

Perfection of security interest in property subject to certain statutes, regulations, and treaties

Under the bill, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to any of the following (R.C. 1309.311(A)):

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt the general requirement that a financing statement must be filed to perfect a security interest;

(2) Transactions covered by the state's certificate of title statutes for automobiles and the like;

(3) A certificate of title statute of another jurisdiction that provides for a security interest 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 property.

The bill also modifies the current language with regards to compliance with other law as described above. The bill adds a provision that a security interest perfected by compliance with the requirements of other law stated above remains perfected notwithstanding a change in the use or transfer of possession of the collateral. It also provides that duration and renewal of perfection of such a security interest are governed by the other law. The bill also adds a provision that during any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, the above provisions do not apply to a security interest in that collateral created by that person as debtor. (R.C. 1309.311(B) to (D).)

Perfection of security interests in chattel paper, deposit account, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money

The bill allows a security interest in chattel paper, negotiable documents, instruments, or investment property to be perfected by filing a financing statement. The bill also provides that generally a security interest in a deposit account or a letter-of-credit right may be perfected only by control, and that a security interest in money may be perfected only by the secured party's taking possession. A security interest in goods covered by a negotiable document may be perfected by perfecting a security interest in the document. A security interest in goods covered by a nonnegotiable document may be perfected by issuance of a document in the

name of the secured party, the bailee's receipt of notification of the secured party's interest, or filing as to the goods. (R.C. 1309.312(A) to (D).)

Temporary perfection without filing or transfer of possession

The bill reduces the length of time a security interest in instruments, certificated securities, or negotiable documents is perfected without filing or taking possession from 21 days to 20 days from the time it attaches. The bill also modifies the language with regards to the temporary perfection of a perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, and for a perfected security interest in an instrument or certificated security, and also provides that the security interest remains perfected for 20 days without filing a financing statement if certain conditions are met. (R.C. 1309.312(E) to (G).)

When possession by or delivery to a secured party perfects a security interest without filing

Under the bill, generally a secured party may perfect a security interest in instruments, negotiable documents, money, or tangible chattel paper by taking possession of the collateral. The bill also allows a secured party to perfect a security interest in certificated securities by taking delivery of them. If goods are covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the specific circumstances described in the bill. (R.C. 1309.313(A) and (B) and 1309.316(D).)

The bill also provides that, with respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of business when either of the following applies (R.C. 1309.313(C)):

(1) The person in possession authenticates a record acknowledging that the person holds possession of the collateral for the secured party's benefit.

(2) The person takes possession of the collateral after having authenticated a record acknowledging that the person will hold possession of the collateral for the secured party's benefit.

If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession. The bill also provides that a possessory security interest in a certificated security in registered form remains perfected by delivery until the debtor obtains

possession of the security certificate. A person in possession of collateral is not required to acknowledge that the person holds possession for the secured party's benefit. (R.C. 1309.313(D), (E), and (F).)

The bill states that if a person acknowledges that the person holds possession for a secured party's benefit (R.C. 1309.313(G)):

(1) The acknowledgment is effective even if it violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than R.C. Chapter 1309. otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

Under the bill, a secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery to hold possession of the collateral for the secured party's benefit or to redeliver the collateral to the secured party (R.C. 1309.313(H)).

The bill provides that a secured party does not relinquish possession by making a delivery even if the delivery violates the rights of the debtor. A person to whom collateral is delivered as described in the prior paragraph does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than the bill otherwise provides.

Perfection by control

The bill provides that a security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control. A security interest is perfected by control when the secured party obtains control and remains perfected by control only while the secured party retains control. The bill also states that a security interest in investment property is perfected by control from the time the secured party obtains control and remains perfected by control until the secured party does not have control and any of the following occurs (R.C. 1309.314):

(1) The debtor has or receives possession of collateral that is a certificated security.

(2) The debtor becomes the registered owner of collateral that is an uncertificated security.

(3) The debtor is or becomes the entitlement holder of collateral that is a security entitlement.

Secured party's rights on disposition of collateral and in proceeds

Under the bill, the general rule for the continuation of a security interest or agricultural lien following disposition of the collateral is that a security interest or agricultural lien continues in collateral notwithstanding the sale, lease, license, exchange, or other disposition unless the secured party authorized the disposition free of the security interest or agricultural lien. A security interest attaches to any identifiable proceeds of the collateral. (R.C. 1309.315(A).) The bill also provides that proceeds that are commingled with other property are identifiable proceeds under certain circumstances. If the proceeds are goods, they are identifiable proceeds to the extent provided under the provision of the bill dealing with commingled goods (R.C. 1309.336). If the proceeds are not goods, they are identifiable proceeds to the extent that the secured party identifies the proceeds by a method of tracing that is permitted under law other than the bill with respect to commingled property of the type involved. (R.C. 1309.315(B).)

A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected. A perfected security interest in proceeds becomes perfected on the 21st day after the security interest attaches to the proceeds unless one of the following applies (R.C. 1309.315(D)):

(1) A filed financing statement covers the original collateral, the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed, and the proceeds are not acquired with cash proceeds.

(2) The proceeds are identifiable cash proceeds.

(3) The security interest in the proceeds is perfected other than because the original collateral was perfected when the security interest attaches to the proceeds or within 20 days thereafter.

A security interest in proceeds perfected under (1) above ceases to be perfected at the later of when the financing statement covering the original collateral lapses or is terminated or the 21st day after the security interest attaches (R.C. 1309.315(E)).

Continued perfection of a security interest following a change in governing law

Under the bill, a security interest perfected under the law of one jurisdiction remains perfected until the earliest of one of the following (R.C. 1309.316(A)):

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction;

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes the debtor and is located in another jurisdiction.

If a security interest described above becomes perfected under the law of the other jurisdiction before the earliest time or event described above, it remains perfected. If the security interest does not become perfected under the law of the other jurisdiction under those circumstances, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value. (R.C. 1309.316(B).)

The bill also provides that a possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if all of the following apply (R.C. 1309.316(C)):

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction.

(2) The collateral is then brought into another jurisdiction.

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

Under the bill, generally a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. Such a security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods if the applicable requirements for perfection are not satisfied before the earlier of the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state, or the expiration of four months after the goods had become so covered. (R.C. 1309.316(D) and (E).)

The bill also states that a security interest in deposit accounts, letter-of-credit rights, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the security

intermediary's jurisdiction, or the commodity intermediary's jurisdiction remains perfected until the earlier of the time the security interest would have become unperfected under the other jurisdiction's law or four months after a change of applicable jurisdiction. If such a security interest in deposit accounts, letter-of-credit rights, or investment property is perfected before the earlier of those periods of time, it remains perfected. If not, it becomes unperfected and is deemed never to have been perfected as against a purchaser. (R.C. 1309.316(F) and (G).)

Interests that take priority over or take free of an unperfected security interest or agricultural lien

Under the bill, a security interest or agricultural lien is subordinate to the rights of a person entitled to priority under the bill and generally to a person who becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed. The bill also provides that, generally, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate 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. (R.C. 1309.317(A) and (B).)

Generally, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than 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. (R.C. 1309.317(C) and (D).)

If a purchase money-security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest in the collateral takes priority over the rights of buyers, lessees, or lien creditors that arise between the time the security interest attaches and the time of filing (R.C. 1309.317(E)).

Rights and title of debtor, seller of account or chattel paper, and consignee with respect to creditors and purchasers

Under the bill, a debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold. The bill provides that, for the purposes of determining the rights of creditors of and purchasers for value of an account or chattel paper from a debtor that has sold an account or chattel paper while the buyer's security is unperfected,

the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold. (R.C. 1309.318(A) and (B).)

Except as otherwise provided below, for purposes of determining the rights of creditors of and purchasers for value of goods from a consignee while the goods are in possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. For purposes of determining the rights of a creditor of a consignee, law other than the bill determines the rights and title of a consignee while goods are in the consignee's possession if, under the bill, a perfected security interest held by the consignor would have priority over the rights of the creditor. (R.C. 1309.319(A) and (B).)

Buyer of goods

The bill provides that generally, a buyer in the ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. On the other hand, a buyer of goods from a person who used or bought the goods for primarily personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys without knowledge of the security interest, for value, primarily for the buyer's personal, family, or household purposes, and before the filing of a financing statement covering the goods. These provisions do not affect a security interest in goods in the possession of the secured party. (R.C. 1309.320(A), (B), and (E).)

To the extent that it affects the priority of a security interest over a buyer of goods as described above, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by the provisions of the bill dealing with security interests perfected in another jurisdiction. The bill also provides that a buyer in the ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance. (R.C. 1309.320(C) and (D).)

Licensee of general intangible and lessee of goods in ordinary course of business

Under the bill, "licensee in the ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of

business in which the licensor is engaged or with the licensor's own usual or customary practices.

A licensee in the ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence. A lessee in the ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence. (R.C. 1309.321.)

Priorities among conflicting security interests in and agricultural liens on the same collateral

The bill provides the general priority rules among conflicting security interests and agricultural liens in the same collateral. They are determined by the following rules (R.C. 1309.322(A)):

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

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

For the purposes of the above described rules, the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, and the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation (R.C. 1309.322(B)).

The bill also provides that, as a general rule, a security interest in collateral that qualifies for priority over a conflicting security interest also has priority over either of the following (R.C. 1309.322(C)):

(1) A conflicting security interest in any supporting obligation for the collateral;

(2) A conflicting security interest in proceeds of the collateral if the security interest in proceeds is perfected, the proceeds are cash proceeds or of the same type as the collateral, and, in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

As a general rule, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing. This provision only applies if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights. (R.C. 1309.322(D) and (E).)

The bill also provides that a perfected agricultural lien on collateral has priority over a conflicting security interest or agricultural lien on the same collateral if the statute creating the agricultural lien so provides (R.C. 1309.322(G)).

Future advances

The bill provides that, except as otherwise provided below, for the purposes of determining the priority of a perfected security interest, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that (R.C. 1309.323(A)):

(1) Is made while the security interest is perfected only under R.C. 1309.309 when it attaches or temporarily under R.C. 1309.312(E), (F), or (G);

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under R.C. 1309.309 or R.C. 1309.312(E), (F), or (G).

Except as otherwise provided below, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures advances made more than 45 days after the person becomes a lien creditor unless the advance is made without knowledge of the lien, or pursuant to a commitment entered into without knowledge of the lien. The above rules do not apply to a security interest held by a secured party that is a consignor or a buyer of accounts, chattel paper, payment intangibles, or promissory notes. (R.C. 1309.323(B) and (C).)

Except as otherwise provided below, a buyer of goods other than a buyer in the ordinary course of business takes free of a security interest to the extent that it

secures advances made after the earlier of the time the secured party acquires knowledge of the buyer's purchase or 45 days after the purchase. This provision does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period. (R.C. 1309.323(D) and (E).)

Except as otherwise provided below, a lessee of goods, other than a lessee in the ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of the time the secured party acquires knowledge of the lease, or 45 days after the lease contract becomes enforceable. This provision does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period. (R.C. 1309.323(F) and (G).)

Priority of purchase money security interests

Except as otherwise provided below, a perfected purchase money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods and, except as otherwise provided for security interests in the same deposit collateral, a perfected security interest in its identifiable proceeds also has priority, if the purchase money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter. (R.C. 1309.324(A).)

Except as otherwise provided below, a perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, and generally also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer if all of the following apply (R.C. 1309.324(B)):

(1) The purchase money security interest is perfected when the debtor receives possession of the inventory.

(2) The purchase money secured party sends an authenticated notification to the holder of the conflicting security interest.

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory.

(4) The notification states that the person sending the notification has or expects to acquire a purchase money security interest in inventory of the debtor and describes the inventory.

Paragraphs (2), (3), and (4), above, apply only if the holder of the conflicting security interest filed a financing statement covering the same types of inventory, and either the purchase money security interest is perfected by filing, before the date of the filing, or the purchase money security interest is temporarily perfected without filing or possession before the beginning of the 20-day period. (R.C. 1309.324(C).)

Except as otherwise provided below, a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in the bill, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority if all of the following apply (R.C. 1309.324(D)):

(1) The purchase money security interest is perfected when the debtor receives possession of the livestock.

(2) The purchase money secured party sends an authenticated notification to the holder of the conflicting security interest.

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock.

(4) The notification describes the livestock and states that the person sending the notification has or expects to acquire a purchase money security interest in livestock of the debtor.

Paragraphs (2), (3), and (4), above, apply only if the holder of the conflicting security interest filed a financing statement covering the same types of livestock if the purchase money security interest is perfected by filing, before the date of filing, or if the purchase money security interest is temporarily perfected without filing or possession before the beginning of the 20-day period (R.C. 1309.324(E)).

Except as otherwise provided below, a perfected purchase money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in the bill, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this provision (R.C. 1309.324(F)).

Priority of security interests in transferred collateral

Except as otherwise provided below, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if the debtor acquired the collateral subject to the security interest created by another person, the security interest created by the other person was perfected when the debtor acquired the collateral, and there is no period thereafter when the security interest is unperfected. This rule subordinates a security interest only if the security interest otherwise would have priority solely under the bill or arose solely under the bill. (R.C. 1309.325(A) and (B).)

Priority of security interests created by a new debtor

Generally, a security interest created by a new debtor that is perfected by a filed financing statement that is effective solely under R.C. 1309.508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected other than by a filed financing statement that is effective solely under R.C. 1309.508. The bill's provisions on perfection determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under R.C. 1309.508. 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 interest ranks according to priority in time of the new debtor's having become bound. (R.C. 1309.326.)

Priority of security interests in a deposit account

Under the bill, the following rules govern priority among conflicting security interests in the same deposit account (R.C. 1309.327):

(A) A security interest held by a secured party having control of the deposit account has priority over a conflicting security interest held by a secured party that does not have control.

(B) Except as otherwise provided in (C) and (D) below, security interests perfected by control rank according to priority in time of obtaining control.

(C) Except as otherwise provided in (D) below, a security interest held by the bank in which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(D) A security interest perfected by control has priority over a security interest held by the bank with which the deposit account is maintained.

Priority of security interests in investment property

Under the bill, priority between conflicting security interests in the same investment property is governed by the following rules (R.C. 1309.328):

(A) A security interest held by a secured party having control over investment property has priority over a security interest held by a secured party that does not have control over the investment property.

(B) Except as otherwise provided in (C) and (D) below, conflicting security interests held by secured parties each of which has control rank according to priority in time of one of the following:

(1) If the collateral is a security, obtaining control;

(2) If the collateral is a security entitlement carried in a securities account and:

(a) If the secured party obtained control under R.C. 1308.24(D)(1), the secured party's becoming the person for which the securities account is maintained; or

(b) If the secured party obtained control under R.C. 1308.24(D)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account;

(c) If the secured party obtained control through another person under R.C. 1308.24(D)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(3) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in the bill with respect to commodity contracts carried or to be carried with the commodity intermediary.

(C) A security interest held by a securities intermediary in a securities entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(D) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(E) A security interest in a certificated security in registered form that is perfected by taking delivery under the bill and not by control under the bill has priority over a conflicting security interest perfected by a method other than control.

(F) Conflicting security interests created by a broker, a securities intermediary, or a commodity intermediary that are perfected without control under the bill rank equally.

(G) In all other cases, priority between conflicting security interests in investment property is governed by R.C. 1309.322 and 1309.323.

Priority of security interests in letter-of-credit rights

Under the bill, the following rules govern priority among conflicting security interests in the same letter-of-credit right (R.C. 1309.329):

(A) A security interest held by a secured party having control of the letter-of-credit right under R.C. 1309.107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(B) Security interests perfected by control under R.C. 1309.314 rank according to priority in time of obtaining control.

Priority of purchaser of chattel paper or an instrument

The bill provides that a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if both of the following apply (R.C. 1309.330(A)):

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under R.C. 1309.105.

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

A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under R.C. 1309.105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party. Except as otherwise provided in R.C. 1309.327, a purchaser having priority in chattel paper as

described above also has priority in proceeds of the chattel paper to the extent that R.C. 1309.322 provides for priority in the proceeds, or the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected. Generally, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party. (R.C. 1309.330(B), (C), and (D).)

For the purposes of the above provisions, the holder of a purchase money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory. For purposes of the above provisions, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party. (R.C. 1309.330(E) and (F).)

Priority of rights of purchasers of instruments, documents, and securities under R.C. Chapters 1303., 1307., and 1308. and priority of interests in financial assets and security entitlements under R.C. Chapter 1308.

The bill provides that R.C. Chapter 1309. does not limit the rights of a holder in due course of a negotiable instrument, or a holder to whom a negotiable document of title has been duly negotiated, or a protected purchaser of a security under R.C. 1307.29. These holders or purchasers take priority over an earlier security interest, even though perfected, to the extent provided in R.C. Chapters 1303., 1307., and 1308. The bill also provides that R.C. Chapter 1309. does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under R.C. Chapter 1308. Filing under R.C. Chapter 1309. does not constitute notice of a claim or defense to the holders, purchasers, or persons described in R.C. 1309.331(A) or (B). (R.C. 1309.331.)

Transfer of money and transfer of funds from a deposit account

The bill provides that a transferee of money takes the money free of a security interest, and a transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party (R.C. 1309.332).

Priority of certain liens arising by operation of law

For the purposes of the following provision, the bill defines "possessory lien" as an interest, other than a security interest or an agricultural lien to which all of the following apply (R.C. 1309.333(A)):

(1) It secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business.

(2) It is created by statute or rule of law in favor of the person.

(3) Its effectiveness depends on the person's possession of the goods.

A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise (R.C. 1309.333(B)).

Priority of security interests in fixtures and crops

A security interest under the bill may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under the bill in ordinary building materials incorporated into an improvement on land. The Secured Transactions Law does not prevent the creation of an encumbrance upon fixtures to real property law. In cases not governed by the provisions discussed below, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor. (R.C. 1309.334(A) to (C).)

Except as otherwise provided below, a perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, and the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days after the goods become fixtures (R.C. 1309.334(D)).

A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if any of the following apply (R.C. 1309.334(E)):

(1) The debtor has an interest of record in the real property or is in possession of the real property, and the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record and has

priority over any conflicting interest of a predecessor in title of the encumbrancer or owner.

(2) Before the goods became fixtures, the security interest is perfected by any method permitted by the bill, and the fixtures are readily removable factory or office machines, equipment that is not primarily used or leased for use in the operation of the real property, or replacements of domestic appliances that are consumer goods.

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by the bill.

(4) The security interest is created in a manufactured home in a manufactured home transaction and perfected pursuant to a section listed in R.C. 1309.311(A)(2).

A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real property if (1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures, or (2) the debtor has a right to remove the goods as against the encumbrancer or owner. The priority of the security interest under clause (2), above, continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates. (R.C. 1309.334(F) and (G).)

A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided above, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent that it is given to refinance a construction mortgage. (R.C. 1309.334(H).)

A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property. This rule prevails over any inconsistent statute not specifically enumerated under R.C. 1309.109(D)(2) and applicable by their terms. (R.C. 1309.334(I) and (J).)

Accessions

Under the bill, a security interest may be created in an accession and continues in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral. (R.C. 1309.335(A) and (B).)

Except as otherwise provided below, the other provisions of the bill dealing with perfection determine the priority of a security interest in an accession. A security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under the bill. (R.C. 1309.335(C) and (D).)

After default, subject to the bill's provisions dealing with defaults and remedies, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole. A secured party that removes an accession from other goods shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. (R.C. 1309.335(E) and (F).)

Commingled goods

The bill defines "commingled goods" as goods that are physically united with other goods in such a manner that their identity is lost in a product or mass. It provides that a security interest does not exist in commingled goods as such, but that a security interest may attach to a product or mass that results when goods become commingled goods. If collateral becomes commingled goods, a security interest attaches to the product or mass. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected. (R.C. 1309.336(A) to (D).)

Except as otherwise provided below, the other provisions of the bill dealing with perfection determine the priority of a security interest that attaches to the product or mass. If more than one security interest attaches to the product or mass, a security interest that is perfected as discussed above has priority over a security interest that is unperfected at the time the collateral becomes commingled goods, and, if more than one security interest is perfected as discussed above, the

security interest ranks equally in proportion to the value of the collateral at the time it became commingled goods. (R.C. 1309.336(E) and (F).)

Priority of security interests in goods covered by a certificate of title

Under the bill, if, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate, both of the following apply (R.C. 1309.337):

(A) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(B) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under R.C. 1309.311(B), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Priority of security interest or agricultural lien perfected by a filed financing statement providing certain incorrect information

Under the bill, if a security interest or agricultural lien is perfected by a filed financing statement providing required information that is incorrect at the time the financing statement is filed, both of the following apply (R.C. 1309.338):

(A) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information.

(B) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Effectiveness of right of recoupment or set-off against a deposit account

Except as otherwise discussed below, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account. Also, except as otherwise discussed below, the application of the bill's provisions to a security

interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control, if the set-off is based on a claim against the debtor. (R.C. 1309.340.)

Bank's rights and duties with respect to a deposit account

Under the bill, except as otherwise discussed above, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by the creation, attachment, or perfection of a security interest in the deposit account, the bank's knowledge of the security interest, or the bank's receipt of instructions from the secured party (R.C. 1309.341).

Bank's right to refuse to enter into or disclose the existence of a control agreement

The bill does not require a bank to enter into an agreement to comply with the instructions of the secured party directing disposition of funds without further consent of the debtor, even if its customer so requests or directs. A bank that has entered into one of these agreements is not required to confirm the existence of the agreement to another person unless requested to do so by the customer. (R.C. 1309.342.)

PART 4--RIGHTS OF THIRD PARTIES

Alienability of debtor's rights

The bill provides that, except as provided in certain other specified provisions of R.C. Chapter 1309., whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than that of R.C. Chapter 1309. An agreement between the debtor and secured party that prohibits the transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. (R.C. 1309.401.)

Secured party not obligated on contract of debtor or in tort

Under the bill, the existence of a security interest, *agricultural lien* (added by the bill), or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions (R.C. 1309.402).

Agreement not to assert defenses against assignee

As under current law, the bill generally validates an agreement between an account debtor and an assignor under which the account debtor will not assert against an assignee claims and defenses that it may have against the assignor. This does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument. It eliminates a current provision that recognizes the possibility of the establishment of a different rule for buyers or lessees of consumer goods. (R.C. 1309.403(B) and (C).)

In a consumer transaction, if a record that evidences the account debtor's obligation is required to contain but does not contain the federally-required notice that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, an assignee of such a record takes subject to the consumer account debtor's claims and defenses to the same extent as it would have if the writing had contained the notice (R.C. 1309.403(D)).

These provisions are subject to law other than R.C. Chapter 1309. that establishes a different rule for an account debtor who is an individual and incurred the obligation primarily for personal, family, or household purposes (hereinafter "consumer account debtor") (R.C. 1309.403(E)).

Rights acquired by assignee; claims and defenses against assignee

The bill provides that unless an account debtor has made an enforceable agreement not to assert defenses or claims, an assignee generally takes an assignment subject to the defenses and claims of an account debtor. The claim that an account debtor may assert against an assignee can serve only to reduce the amount the account debtor owes. This new section is subject to other laws that may establish special rules for consumer account debtors. (R.C. 1309.404.)

Modification of assigned contract

The ability of account debtors and assignors to modify assigned contracts is important, especially with respect to contractual arrangements to which modifications are customary. Under the bill, a good-faith modification of or substitution for an assigned contract is effective against an assignee to the extent that (1) the right to payment has not been fully earned by performance, or (2) the right to payment has been fully earned by performance, and the account debtor has not received notification of the assignment. These provisions are subject to other laws that may establish different rules for consumer account debtors but do not apply to an assignment of a health-care-insurance receivable. (R.C. 1309.405.)

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

The bill recognizes the general right of an account debtor on an account, chattel paper, or a payment intangible to discharge its obligation by paying the assignor until, but not after, the account debtor receives an authenticated notification stating that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of such notification, the account debtor can discharge its obligation only by paying the assignee and cannot discharge the obligation by paying the assignor. A notification of this type can be ineffective on a number of grounds, such as the notification does not reasonably identify the rights assigned. (R.C. 1309.406(A) and (B).)

If so requested by the account debtor, an assignee is required to furnish reasonable proof that the assignment has been made, and, unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification of assignment (R.C. 1309.406(C)).

Under the bill, with a few specified exceptions, a term in an agreement between an account debtor and an assignor or in a promissory note and a rule of law, statute, or regulation that governs an account or chattel paper that prohibits or in certain other ways restricts the assignability of the account, promissory note, or chattel paper generally is ineffective. (R.C. 1309.406(D) and (F).) These provisions do not apply to: (1) a claim or right to receive compensation for injuries or sickness as described in the Internal Revenue Code, or (2) a claim or right to receive benefits under a special needs trust described in the Social Security Law (R.C. 1309.406(J)). The bill provides that R.C. 1309.406(D), (F), and (J) apply only to a security interest created on or after July 1, 2001. It specifies that nothing in R.C. 1309.406 supersedes the provisions of the Transfer of Structured Settlement Payment Rights Law, and that that section must be interpreted consistently with that Law. (R.C. 1309.406(K).)

The bill's provisions are subject to laws other than that of Chapter 1309. that establish different rules for consumer account debtors, and do not apply to an assignment of a health-care-insurance receivable (R.C. 1309.406(H) and (I)).

Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest

Under the bill, a term in a lease agreement that prohibits or in certain other ways restricts the creation of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods generally is

ineffective. However, a term in a lease agreement that provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease is effective to the extent that there is either: (1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term, or (2) a delegation of a material performance of either party to the lease contract in violation of the term. (R.C. 1309.407(A) and (B).)

A lessor's creation of a security interest in its interest under the lease or its residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the scope of certain other specified law unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor (R.C. 1309.407(C)).

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

The bill provides that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible and a rule of law, statute, law, or regulation that governs an account or chattel paper that prohibits or in certain other ways restricts the assignability of a promissory note or the health-care-insurance receivable or a general intangible generally is not effective (R.C. 1309.408(A) to (C)). However, the bill provides that to the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in the preceding sentence would be effective under law other than R.C. Chapter 1309. but is ineffective under the preceding sentence, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible does not adversely affect account debtors on general intangibles and health-care-insurance receivables and persons obligated on promissory notes due to a number of new provisions (R.C. 1309.408(D)). For example, the creation, attachment, or perfection of such a security interest is not enforceable against the person obligated on the promissory note or the account debtor, nor does it impose a duty or obligation on the person obligated on the promissory note or the account debtor (R.C. 1309.408(D)(1) and (2)).

The above provisions regarding the ineffectivity of assignability prohibitions or restrictions do not apply to: (1) a claim or right to receive compensation for injuries or sickness as described in the Internal Revenue Code,

and (2) a claim or right to receive benefits under a special needs trust described in the Social Security Law. (R.C. 1309.408(E).) The bill provides that R.C. 1309.408(A), (C), and (E) apply only to a security interest created on or after July 1, 2001. It specifies that nothing in R.C. 1309.408 supersedes the provisions of the Transfer of Structured Settlement Payment Rights Law, and that that section must be interpreted consistently with that Law. (R.C. 1309.408(F).)

Restrictions on assignment of letter-of-credit rights ineffective

In relation to a term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to a letter of credit, the bill generally limits the effectiveness of attempts to restrict the creation, attachment, or perfection of a security interest in letter-of-credit rights (R.C. 1309.409(A)).

PART 5--FILING

Filing office

The bill eliminates the provision of current law that requires certain financing statements to be filed both with the office of the Secretary of State and the office of a particular county recorder (dual filing). The office of the Secretary of State or a duly authorized office of the Secretary of State becomes the filing location in most instances, with local filing in the office of the county recorder being reserved for real-estate-related collateral and fixtures. The office of the Secretary of State is the proper place to file a financing statement covering collateral of a transmitting utility, including fixtures. (R.C. 1309.501.)

Contents of financing statement; record of mortgage as financing statement; time of filing financing statement

The filing of the security agreement itself is not required under the bill, but instead only a simple record that provides a limited amount of information (the financing statement). A financing statement generally is sufficient so long as it provides the name of the debtor and the name of the secured party or the secured party's representative, and indicates the collateral covered by the financing statement (R.C. 1309.502(A)). A financing statement covering as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, also must indicate that it covers this type of collateral, indicate that it is to be filed in the real property records, provide a sufficient description of the real property, and provide the name of a record owner if the debtor does not have an interest of record in the real property (R.C. 1309.502(B)).

A record of a mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut if certain conditions are met, such as the record indicates the goods or accounts that it covers and the record is duly recorded (R.C. 1309.502(C)).

The bill permits a financing statement to be filed before a security agreement is made or a security interest otherwise attaches (R.C. 1309.502(D)).

Name of debtor and secured party

Financing statements are indexed under the debtor's name and searches are conducted under the debtor's name. The bill prescribes what generally constitutes a name in a financing statement and also has specific provisions if the debtor is a registered organization, a decedent's estate, or a trust or a trustee acting with respect to property held in trust (R.C. 1309.503(A)). A financing statement that properly provides the debtor's name is not ineffective by the absence of a trade name or other name of the debtor or the names of partners, members, associates, or other persons comprising the debtor, unless otherwise required, and a financing statement may provide the name of more than one debtor and more than one secured party (R.C. 1309.503(B) and (E)).

A financing statement that provides only the debtor's trade name does not sufficiently provide the debtor's name, but failure to indicate the representative capacity of a secured party or representative of a secured party does not affect a financing statement's sufficiency (R.C. 1309.503(C) and (D)).

Indication of collateral

Under the bill, a financing statement sufficiently indicates the collateral that it covers if the financing statement provides either a description of the collateral in accordance with the bill or an indication that the financing statement covers all assets or all personal property (R.C. 1309.504).

Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions

The bill provides the option of filing a financing statement with appropriate terminology changes without affecting the substantive question of transaction classification. A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in the bill, using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor." (R.C. 1309.505(A).)

New R.C. 1309.501 to 1309.529, which govern filing of financing statements, apply to the filing of a financing statement under the preceding paragraph and, as appropriate, to compliance that is equivalent to filing a financing statement under the bill, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer that attaches to the collateral is perfected by the filing or compliance. (R.C. 1309.505(B).)

Effect of errors or omissions

Under the bill, a financing statement that satisfies substantially the requirements of the sections of the bill governing the filing of financing statements is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. A financing statement that fails sufficiently to provide the name of the debtor generally is seriously misleading, unless a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor; in such a case, the name provided does not make the financing statement seriously misleading. (R.C. 1309.506(A), (B), and (C).)

Effect of certain events on effectiveness of financing statement

The bill addresses those situations in which the information in a financing statement becomes inaccurate after the statement is filed. Under the bill, a filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition (R.C. 1309.507(A)).

Except as otherwise provided, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading. If a debtor so changes its name that a filed financing statement becomes seriously misleading: (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, 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 unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within four months after the change. (R.C. 1309.507(A) and (C).)

Effectiveness of financing statement if new debtor becomes bound by security agreement

The bill addresses the situation in which a "new debtor" becomes bound as debtor by a security agreement entered into by the original debtor. A filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral (R.C. 1309.508(A)).

If the difference between the original debtor's name and that of the new debtor causes a filed financing statement that is effective under the preceding paragraph to be seriously misleading: (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 the bill, and (2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under that paragraph unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time. (R.C. 1309.508(B).)

Persons entitled to file a record

The bill contains provisions that determine whether a record may be filed. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if the debtor authorizes the filing in an authenticated record or pursuant to other provisions of the bill, or the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement and an amendment covering both the collateral described in the security agreement and property that becomes collateral under the bill, whether or not the security agreement expressly covers proceeds. (R.C. 1309.509(A) and (B).)

By acquiring collateral in which a security interest or agricultural lien continues under the bill, a debtor authorizes the filing of an initial financing statement and an amendment covering the collateral and property that becomes collateral under the bill.

The bill permits a person to file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a

debtor to a financing statement only if: (1) the secured party of record authorizes the filing, or (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by the bill, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized its filing. Each secured party of record may authorize the filing of such an amendment if there is more than one secured party of record for a financing statement. (R.C. 1309.509(C), (D), and (E).)

Effectiveness of filed record

Under the bill, a filed record is effective only to the extent that it was filed by a person who is permitted to file it under the bill. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record. A continuation statement that is not filed within the six-month period prescribed by the bill is not effective. (R.C. 1309.510.)

Secured party of record

The bill prescribes how the secured party of record is determined. With respect to a financing statement, the secured party of record is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under the bill's assignment of powers provisions, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under the bill's assignment of powers provisions, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement that deletes the person as a secured party of record. (R.C. 1309.511(B) and (C).)

Amendment of financing statement

The bill considers all changes to financing statements, including addition and deletion of collateral, as amendments to financing statements. While it has provisions applicable to all types of amendments, it also contains additional provisions applicable to particular types of amendments, such as termination statements, assignments, and continuation statements.

Subject to the bill's provisions governing who is entitled to file a record, a person may add or delete collateral covered by, continue or terminate the

effectiveness of, or, subject to the bill's provision governing ineffective amendments, otherwise amend the information provided in a financing statement by filing an amendment that: (1) identifies, by its file number, the initial financing statement to which the amendment relates, and (2) if the amendment relates to an initial financing statement filed in the office of the county recorder, provides the date and time that the initial financing statement was filed and the information required for filings related to real property (R.C. 1309.512(A)).

Except as otherwise provided in the bill, the filing of an amendment does not extend the period of effectiveness of the financing statement. A financing statement that is amended by an amendment that adds collateral or a debtor is effective as to the added collateral or the added debtor only from the date of the filing of the amendment.

An amendment is ineffective to the extent it either purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement or purports to delete all secured parties of record and fails to provide the name of a new secured party of record. (R.C. 1309.512(B) to (E).)

Termination statement

The bill specifies when a secured party must file or send a termination statement to the debtor. A secured party is required to cause the secured party of record for a financing statement to file a termination statement for the financing statement if it covers consumer goods and: (1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value, or (2) the debtor did not authorize the filing of the initial financing statement. To comply with this requirement, a secured party must cause the secured party of record to file the termination statement: (1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value, or (2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor. (R.C. 1309.513(A) and (B).)

In cases not governed by the preceding paragraph, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party must cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if any of the following apply: (1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value, (2) the financing statement

covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation, (3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession, or (4) the debtor did not authorize the filing of the initial financing statement. (R.C. 1309.513(C).)

Under the bill, except as otherwise provided in the bill, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective, and the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse (R.C. 1309.513(D)).

Assignment of powers of secured party of record

The bill provides a permissive device whereby a secured party of record may effectuate an assignment of its power to affect a financing statement. Except as otherwise provided in the bill, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

In addition, except as otherwise provided in the bill, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement that: (1) identifies, by its file number, the initial financing statement to which it relates, (2) provides the name of the assignor, and (3) provides the name and mailing address of the assignee.

An assignment of record of a security interest in a fixture covered by a record of a mortgage that is effective as a financing statement filed as a fixture filing may be made only by an assignment of record of the mortgage in the manner provided by the laws of this state other than those contained in the Uniform Commercial Code. (R.C. 1309.514.)

Duration and effectiveness of financing statement; effect of lapsed financing statement

Under the bill, the general rule is that a financing statement is effective for a period of five years after the date of filing unless its effectiveness is continued or terminated. The general rule in the case of an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is that the statement is effective for a period of 30 years after the date of filing if it

indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction. (R.C. 1309.515(A) and (B).)

The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless, before the lapse, a continuation statement is filed. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value. (R.C. 1309.515(C).)

A continuation statement may be filed only within six months before the expiration of the applicable five-year or thirty-year period. Except as otherwise provided in the bill, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses, unless, before the lapse, another continuation statement is filed. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement. (R.C. 1309.515(D) and (E).)

If a debtor is a transmitting utility and a filed financing statement indicates this fact, the financing statement is effective until a termination statement is filed. A record of a mortgage that is effective as a financing statement filed as a fixture filing remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property. (R.C. 1309.515(F) and (G).)

What constitutes filing; effectiveness of filing

The bill describes what constitutes a filing of a record, including an initial financing statement and later amendments, and also provides a list of grounds upon which the filing office may reject a record. Generally, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing (R.C. 1309.516(A)).

Filing does not occur with respect to a record that a filing office refuses to accept because of any of the following (R.C. 1309.516(B)):

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

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

(a) In the case of an initial financing statement, the record does not provide a name for the debtor;

(b) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by the bill;
or

(ii) Identifies an initial financing statement whose effectiveness has lapsed.

(c) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not provided previously in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(d) In the case of a record filed in the office of the county recorder, the record does not provide a sufficient description of the real property to which it relates.

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

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

(a) Provide a mailing address for the debtor;

(b) Indicate whether the debtor is an individual or an organization; or

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

(i) A type of organization for the debtor; or

(ii) A jurisdiction of organization for the debtor.



(6) In the case of an assignment reflected in an initial financing statement or in an amendment, the record does not provide a name and mailing address for the assignee;

(7) In the case of a continuation statement, the record is not filed within the required six-month period;

(8) The Secretary of State refuses to accept the record for filing or recording in compliance with R.C. 111.24(A), which authorizes the Secretary of State to refuse to accept documents that the Secretary of State has reasonable cause to believe are materially false or fraudulent or not required or authorized to be filed. (R.C. 1309.516(B).)

For purposes of R.C. 1309.516(B), a record does not provide information if the filing office is unable to read or decipher the information, and a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by the bill, is an initial financing statement (R.C. 1309.516(C)).

The bill provides that a record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one specified in R.C. 1309.516(B), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files (R.C. 1309.516(D)).

Effect of indexing errors

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record (R.C. 1309.517).

Claim concerning inaccurate or wrongfully filed record

Unlike current law, the bill provides a debtor the right to file a correction statement in order to correct a financing statement or other record that was inaccurate or wrongly filed. The bill permits a person to file in the filing office a correction 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 (R.C. 1309.518(A)).

A correction statement must do all of the following (R.C. 1309.518(A)):

(1) Identify the record to which it relates by:

(a) The file number assigned to the initial financing statement to which the record relates; and

(b) If the correction statement relates to a record filed in the office of the county recorder, the date and time that the initial financing statement was filed and the information required for financing statements relating to real property.

(2) Indicate that it is a correction statement; and

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

The filing of a correction statement, however, does not affect the effectiveness of an initial financing statement or other filed record. (R.C. 1309.518(B) and (C).)

Numbering, maintaining, and indexing records; communicating information provided in records

The bill prescribes the duties of the filing office with respect to filed records and establishes a minimum standard of performance for those duties. For each record filed in a filing office, the filing office must do all of the following:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record as required by the bill.

A file number assigned after January 1, 2002, must include a digit that is mathematically derived from or related to the other digits of the file number, and aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error (R.C. 1309.519(B)).

Except as otherwise provided in the bill, the filing office is required to (R.C. 1309.519(C)):

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor that previously was not provided in the financing statement to which the record relates also according to the name that previously was not provided.

If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record, and the filing office is required to index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the laws of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee under the mortgage, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described. (R.C. 1309.519(D).)

Under the bill, if a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office must index an assignment or an amendment under the name of the assignor as grantor, and to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee (R.C. 1309.519(E)).

The filing office is required to maintain a capability (R.C. 1309.519(F)):

(1) To retrieve a record by the name of the debtor and:

(a) If the filing office is the office of the county recorder, by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed; or

(b) If the filing office is the office of the Secretary of State, by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses with respect to all secured parties of record. The filing office is required to perform the acts required by the bill at the time and in the manner prescribed by the filing-office rule. (R.C. 1309.519(F), (G), and (H).)

Acceptance and refusal to accept record

Under the bill, a filing office is not expected to make legal judgments, and cannot impose additional filing conditions or requirements. A filing office is required to refuse to accept a record for filing for a reason specified in the provision of the bill governing the effectiveness of a filing and may refuse to accept a record for filing only for a reason specified in that provision. (R.C. 1309.520(A).)

If a filing office refuses to accept a record for filing, it is required to communicate to the person who presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of the office of the Secretary of State, in no event more than two business days after the filing office receives the record.

A filed financing statement that contains the required information is effective even if the filing office is required to refuse to accept it for filing. However, the bill gives protection to buyers and holders of a perfected security interest who give value in reasonable reliance upon a filed financing statement that provides certain information that is incorrect at the time the financing statement was filed.

If a record communicated to a filing office provides information that relates to more than one debtor, the filing provisions of the bill apply to each debtor separately. (R.C. 1309.520(A) to (D).)

Uniform form of written financing statement and amendment

Under the bill, a filing office that accepts written records may not refuse to accept a written initial financing statement or a written record in the form and format prescribed in the bill except for a reason contained in the provisions of the bill governing refusal by a filing office to accept a record. The bill sets forth a form for filing a UCC Financing Statement, UCC Financing Statement Addendum, UCC Financing Statement Amendment, and UCC Financing Statement Amendment Addendum. (R.C. 1309.521.)

Maintenance and destruction of records

The bill requires a filing office to maintain a record of the information in a financing statement for at least one year after lapse with respect to all secured parties of record, because it must provide information concerning certain lapsed financing statements. The record must be retrievable by using the name of the

debtor and either of the following: (1) if the record was filed in the office of the county recorder, by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed, or (2) if the record was filed in office of the Secretary of State, by using the file number assigned to the initial financing statement to which the record relates. (R.C. 1309.522(A).)

Except as otherwise provided in the Public Records Law or any other provision of the Revised Code governing disposition of public records, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it must maintain another record of the financing statement that complies with the preceding paragraph. (R.C. 1309.522(B).)

Information from filing office; sale or license of records

A filing office may be required to acknowledge the filing of a record. If a person who files a written record requests an acknowledgment of the filing, the filing office is required to send to the person an image of the record showing the number assigned to the record and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office instead may note upon the copy the number assigned to the record and the date and time of the filing of the record, and send the copy to the person. If a person files a record other than a written record, the filing office is required to communicate to the person an acknowledgment that provides the information in the record, the number assigned to the record, and the date and time of the filing of the record. (R.C. 1309.523(A) and (B).)

Under the bill, the filing office is required to communicate or otherwise make available in a record the following information to any person who requests it (R.C. 1309.523(C)):

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(a) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(b) Has not lapsed under the lapse provisions of the bill with respect to all secured parties of record; and

(c) If the request so states, has lapsed under the lapse provisions of the bill and a record of which is maintained by the filing office as required by the bill.

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement. (R.C. 1309.523(C).)

In complying with its duty as discussed in the immediate preceding paragraphs of this analysis, the filing office may communicate information in any medium. However, if requested, the filing office is required to communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity. The filing office must perform the acts required by new R.C. 1309.523 at the time and in the manner prescribed by filing-office rule but not later than two business days after the filing office receives the request. At least weekly, the filing office is required to offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under the bill's filing provisions, in every medium from time to time available to the filing office. (R.C. 1309.523(D), (E), and (F)(1).)

The bill authorizes the Secretary of State to adopt rules pursuant to the Administrative Procedure Act to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the Secretary of State, plus special extraction costs, plus 10%. The Secretary of State may charge for expenses for redacting information, the release of which is prohibited by law. (R.C. 1309.523(F)(2).)

The bill defines "actual cost," "bulk commercial special extraction request," "commercial," and "special extraction costs," for the purposes of the above provisions. (R.C. 1309.523(F)(3).)

It also specifies that for the purposes of the above provisions "commercial surveys, marketing, solicitation, or resale" must be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research (R.C. 1309.523(F)(3)).

Delay by filing office

Delay by the filing office beyond a time limit prescribed by the bill's filing provisions is excused if: (1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office, and (2) the filing office exercises reasonable diligence under the circumstances (R.C. 1309.524).

Fees

The bill generally increases the fees for filing and indexing a record, and furnishing data in the Secretary of State's office in conformity with the fee structure in Am. Sub. H.B. 94 of the 124th General Assembly. The fee for filing and indexing a record under R.C. 1309.501 to 1309.527 is \$12. The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor is \$20 if the request is communicated in writing and \$20 if the request is communicated by another medium authorized by the filing office rule. However, the fee otherwise required is \$5 if the request is limited to communicating only whether there is on file any financing statement naming a particular debtor and the name of the secured party or record relating thereto. (R.C. 1309.525(A) and (B).)

The above fee provisions do not require a fee with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply. (R.C. 1309.525(C).)

The bill provides that any person may request from the Secretary of State a copy of any financing statement naming a particular debtor, owner, or lessee, and of any statement of assignment of the financing agreement, that is on file with the Secretary of State. The request must be in writing to the Secretary of State, and the Secretary of State must charge and collect a fee of \$5 for each copy requested. (R.C. 1309.525(D).)

The bill eliminates the expedited filing service of current law (existing R.C. 1309.402 repealed).

Filing office rules

The bill requires the Secretary of State to adopt rules to implement new R.C. Chapter 1309. The filing-office rules must be consistent with this chapter and must be adopted in accordance with the Administrative Procedure Act. (R.C. 1309.526(A).)

To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially the new Revised Code filing sections of the bill and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially those sections, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of new

R.C. Chapter 1309., must do all of the following in adopting, amending, and repealing filing-office rules (R.C. 1309.526(B)):

(1) Consult with filing offices in other jurisdictions that enact substantially the new Revised Code filing sections of the bill;

(2) Consult the most recent version of the model rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially the new Revised Code filing sections of the bill.

Duty to report

The bill requires the Secretary of State to report by December 31 in each even-numbered year to the General Assembly on the operation of the filing office. The report must contain a statement of the extent to which (R.C. 1309.527):

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially the new Revised Code filing sections of the bill and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

Corporate and Uniform Commercial Code Filing Fund

Existing law requires \$4.50 of each filing fee the Secretary of State collects (\$4.00 on and after July 1, 2001) and all of the fees collected for expedited filing to be deposited in the state treasury to the credit of the Corporate and Uniform Commercial Code Filing Fund. The remainder of all fees not deposited into the Fund are deposited into the General Revenue Fund. The Fund is used solely to pay the expenses relating to the processing of filings under the Uniform Commercial Code and certain other Revised Code provisions.

The bill eliminates these provisions except for the provision relating to the use of the Corporate and Uniform Commercial Code Filing Fund. It requires that funds credited to the Fund may be used only for the purpose of paying for expenses of the Secretary of State's office, other than the Division of Elections, and expenses relating to the processing of filings under R.C. Title XIII or XVII. (R.C. 1309.528(A).)

The bill also creates the Secretary of State Business Technology Fund. One per cent of the money credited to the Corporate and Uniform Commercial Code Filing Fund must be transferred to the credit of this Fund. All moneys credited to this Fund must be used only for the upkeep, improvement, or replacement of equipment or for the purpose of training employees in the use of equipment used to conduct business of the Secretary of State's office under R.C. Title XIII or XVII. (R.C. 1309.528(B).)

Payments by the Secretary of State to County Recorders

The bill requires the Secretary of State to distribute to the county recorders of this state an amount equal to the fees the Secretary collects for filing and indexing filing statements communicated to the Secretary of State in writing under the bill to the extent that the General Assembly appropriates money for that purpose, multiplied by the following percentages:

(1) For the period July 1, 2001, to June 30, 2002, that amount multiplied by 50%.

(2) For the period July 1, 2002, to June 30, 2003, that amount multiplied by 40%.

(3) For the period July 1, 2003, to June 30, 2004, that amount multiplied by 30%.

(4) For the period July 1, 2004, to June 30, 2005, that amount multiplied by 20%.

(5) For the period July 1, 2005, to June 30, 2006, that amount multiplied by 10%.

The Secretary must make these distributions to the county recorders so that the county recorder of each county receives a share of the aggregate amount so distributed equal to, as nearly as may be, the percentage that the fees collected by that county recorder under existing law for calendar year 1998 bore to the total of the fees collected by the county recorders of all counties under existing law for that calendar year. The percentage allocations among the county recorders of the counties must be based upon the fee collection information for calendar year 1998 for each county provided to the Secretary on or before October 31, 2001, by the Association of County Recorders of this state. The Secretary may distribute those amounts from time to time as the Secretary so determines but no less frequently than annually, and in any case must commence the distributions not later than September 30, 2002. (R.C. 1309.529.)

PART 6--DEFAULT

Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes

The bill provides that after default, a secured party has the rights provided in the provisions of the bill governing default and, except as provided in the bill's waiver and variance of rights and duties provisions, those provided by agreement of the parties. A secured party may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure, and, if the collateral is documents, may proceed either as to the documents or as to the goods they cover. A secured party in possession of collateral or control of collateral has the rights and duties provided in the bill to secured parties having possession or control of collateral. These rights are cumulative and may be exercised simultaneously. (R.C. 1309.601(A) to (C).)

Except as provided in the bill, after default a debtor and an obligor have the rights provided in the provisions of the bill governing default and by agreement of the parties (R.C. 1309.601(D)).

Under the bill, if a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of any of the following (R.C. 1309.601(E)):

- (1) The date of perfection of the security interest or agricultural lien in the collateral;
- (2) The date of filing a financing statement covering the collateral;
- (3) Any date specified in a statute under which the agricultural lien was created.

A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of new R.C. 1309.601. A secured party may purchase at the sale and after the sale hold the collateral free of any other requirements of R.C. Chapter 1309.

Except as provided in the provisions of the bill governing collection and enforcement by a secured party, the bill's default provisions do not impose any duties upon a secured party who is a consignor or a buyer of accounts, chattel paper, payment intangibles, or promissory notes. (R.C. 1309.601(F) and (G).)

Waiver and variance of rights and duties

The bill restricts the ability to waive or modify additional specified rights and duties. Except as provided in the bill's waiver provisions, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary any of the following Revised Code provisions:

(1) R.C. 1309.207(B)(4)(c), which relates to the use and operation of the collateral by the secured party;

(2) R.C. 1309.210, which relates to requests for an accounting and requests concerning a list of collateral and statement of account;

(3) R.C. 1309.607(C), which relates to the collection and enforcement of collateral;

(4) R.C. 1309.608(A) and 1309.615(C), to the extent that they relate to the application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) R.C. 1309.608(A) and 1309.615(D), to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) R.C. 1309.609, to the extent that it imposes upon a secured party who takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) R.C. 1309.610(B) and 1309.611, 1309.613, and 1309.614, which relate to the disposition of collateral;

(8) R.C. 1309.615(H), which relates to the calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) R.C. 1309.616, which relates to the explanation of the calculation of a surplus or deficiency;

(10) R.C. 1309.620, 1309.621, and 1309.622, which relate to the acceptance of collateral in satisfaction of obligation;

(11) R.C. 1309.623, which relates to the redemption of collateral;

(12) R.C. 1309.624, which relates to the permissible waivers;

(13) R.C. 1309.625 and 1309.626, which relate to the secured party's liability for failure to comply with the bill's default provisions. (R.C. 1309.602.)

Agreement on standards concerning rights and duties

The bill permits the parties by agreement to determine the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under the bill's waiver and variance of rights provisions if the standards are not manifestly unreasonable. This does not apply to the duty of a secured party to refrain from breaching the peace when taking possession of collateral after default. (R.C. 1309.603.)

Procedure if security agreement covers real property or fixtures

The bill permits a secured party to proceed as to both real and personal property in accordance with its rights and remedies with respect to the real property. Under the bill, if a security agreement covers both personal and real property, a secured party may proceed either under the default provisions of the bill as to the personal property without prejudicing any rights with respect to the real property, or as to both the personal property and the real property, in accordance with the rights with respect to the real property, in which case the bill's other default provisions do not apply. (R.C. 1309.604(A).)

If a security agreement covers goods that are or become fixtures, a secured party generally may proceed under the bill's default provisions or in accordance with the rights with respect to real property, in which case the bill's other default provisions do not apply. Subject to other provisions of the bill's default provisions, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party after default may remove the collateral from the real property.

Under the bill, a secured party who removes collateral is required to reimburse promptly any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. (R.C. 1309.604(B), (C), and D).)

Unknown debtor or secondary obligor

Under the bill, a secured party does not owe a duty based on its status as secured party (R.C. 1309.605):

- (1) To a person who is a debtor or obligor, unless the secured party knows:
 - (a) That the person is a debtor or obligor;
 - (b) The identity of the person; and
 - (c) How to communicate with the person; or
- (2) To a secured party or lienholder who has filed a financing statement against a person, unless the secured party knows:
 - (a) That the person is a debtor; and
 - (b) The identity of the person.

Time of default for agricultural lien

For purposes of the default provisions of the bill, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created (R.C. 1309.606).

Collection and enforcement by secured party

The bill provides that if so agreed, and in any event after default, a secured party may do any of the following (R.C. 1309.607(A)):

- (1) Notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
- (2) Take any proceeds to which the secured party is entitled;
- (3) Enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
- (4) If it holds a security interest in a deposit account perfected by control, apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control, instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

If necessary to enable a secured party to exercise 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 a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage, and the secured party's sworn affidavit in recordable form stating that a default has occurred and the secured party is entitled to enforce the mortgage nonjudicially.

The bill requires a secured party to proceed in a commercially reasonable manner if the secured party undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral and is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor. A secured party may deduct from the collections made pursuant to this provision reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party. (R.C. 1309.607(B), (C), and (D).)

These provisions do not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party (R.C. 1309.607(E)).

Application of proceeds of collection or enforcement; liability for deficiency and right to surplus

The bill provides that if a security interest or agricultural lien secures payment or performance of an obligation, all of the following apply (R.C. 1309.608(A)):

(1) A secured party must apply or pay over for application the cash proceeds of collection or enforcement in the following order:

(a) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(b) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made;

(c) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured

party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien is required to furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party is not required to comply with the holder's demand made under the immediate preceding paragraph.

(3) A secured party is not required to apply or pay over for application noncash proceeds of collection and enforcement under R.C. 1309.607 unless the failure to do so would be commercially unreasonable. A secured party who applies or pays over for application noncash proceeds is required to do so in a commercially reasonable manner.

(4) A secured party is required to account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency (R.C. 1309.608(B)).

Secured party's right to take possession after default

After default, a secured party may take possession of the collateral and without removal may render equipment unusable and dispose of collateral on a debtor's premises under certain conditions. A secured party may so proceed pursuant to judicial process or without judicial process if it proceeds without breach of the peace. (R.C. 1309.609(A) and (B).)

If both parties agree, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place that is designated by the secured party and that is reasonably convenient to both parties (R.C. 1309.609(C)).

Disposition of collateral after default

Under the bill, after default a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing. Every aspect of a disposition of collateral must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. (R.C. 1309.610(A) and (B).)

A secured party may purchase collateral at a public disposition or, if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations, at a private disposition (R.C. 1309.610(C)).

A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and similar property rights that by operation of law accompany a voluntary disposition of property of the kind subject to the contract. However, a secured party may disclaim or modify these warranties either by a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition or by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties. (R.C. 1309.610(D) and (E).)

A record is sufficient to disclaim warranties under the immediate preceding paragraph if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import (R.C. 1309.610(F)).

Notification before disposition of collateral

Except as otherwise provided, a secured party who disposes of collateral is required to send a reasonable authenticated notification of disposition to the following persons (R.C. 1309.611(B) and (C)):

- (1) The debtor;
- (2) Any secondary obligor;
- (3) If the collateral is other than consumer goods:
 - (a) Any other person from whom the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;
 - (b) Any other secured party or lienholder who, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.
 - (c) Any other secured party who, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, rule, or treaty described in R.C. 1309.311(A).

These provisions do not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market (R.C. 1309.611(D)).

The bill provides that a secured party complies with the requirement for notification described in paragraph (3)(b), above, if both of the following apply (R.C. 1309.611(E)):

(1) Not later than 20 days nor earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in that paragraph;

(2) Before the notification date, the secured party did not receive a response to the request for information or received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

As used in these provisions, "notification date" means the earlier of the date on which a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition or the debtor and any secondary obligor waive the right to notification (R.C. 1309.611(A)).

Timeliness of notification before disposition of collateral

Under the bill, whether a notification is sent within a reasonable time generally is a question of fact. A notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition. (R.C. 1309.612.)

Contents and form of notification before disposition of collateral; general

To comply with the above-described "reasonable authenticated notification" requirement, the contents of a notification must be reasonable. The bill provides that except in a consumer-goods transaction, all of the following apply (R.C. 1309.613(A)):

(1) The contents of a notification of disposition are sufficient if the notification describes the debtor and the secured party, describes the collateral that is the subject of the intended disposition, states the method of intended disposition, states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting, and states the time and place of a public sale or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in the immediate preceding portion of this analysis are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified above are sufficient, even if the notification includes information not specified above or minor errors that are not seriously misleading, and a particular phrasing of the notification is not required.

The bill contains a sample form sufficient for the disposition of any collateral except consumer goods (R.C. 1309.613(B)).

Contents and form of notification before disposition of collateral; consumer-good transaction

The bill provides that in a consumer-goods transaction, the following apply (R.C. 1309.614(A)):

(1) A notification of disposition must provide all the following information:

(a) The information specified in R.C. 1309.613(A)(1);

(b) A description of any liability for a deficiency of the person to whom the notification is sent;

(c) A telephone number from which the amount that must be paid to the secured party to redeem the collateral is available;

(d) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

The bill contains a sample form sufficient for the disposition of collateral in a consumer goods transaction (R.C. 1309.614(B)).

Application of proceeds of disposition; liability for deficiency and right to surplus

The bill contains rules governing the application of proceeds and the debtor's liability for a deficiency following a disposition of collateral. Under the bill, a secured party is required to apply or pay over for application the cash proceeds of disposition in the following order (R.C. 1309.615(A)):

(1) To the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) To the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) To the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed and, in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor;

(4) To a secured party who is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

If a secured party so requests, a holder of a subordinate security interest or other lien must furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's authenticated demand for proceeds.

A secured party is not required to apply or pay over for application noncash proceeds of disposition unless the failure to do so would be commercially unreasonable. A secured party who applies or pays over for application noncash proceeds is required to do so in a commercially reasonable manner. (R.C. 1309.615(B) and (C).)

If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required and permitted by this provision, both of the following apply (R.C. 1309.615(D)):

(1) Unless the bill requires the secured party to apply or pay over cash proceeds to a consignor, the secured party is required to account to and pay a debtor for any surplus.

(2) The obligor is liable for any deficiency.

Under the bill, if the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency (R.C. 1309.615(E)).

The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with the default provisions of the bill to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if both of the following apply (R.C. 1309.615(F)):

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor.

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

A secured party who receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made takes the cash proceeds free of the security interest or other lien, is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien, and is not obligated to account to or pay the holder of the security interest or other lien for any surplus (R.C. 1309.615(G)).

Explanation of calculation of surplus or deficiency

The bill reflects the view that in a consumer-goods transaction, the debtor or obligor is entitled to know the amount of a surplus or deficiency and the basis upon which the surplus or deficiency was calculated.

In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency, the secured party is required to do either of the following (R.C. 1309.616(B)):

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency and within 14 days after receipt of a request;

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

To comply with the explanation requirement, a writing must provide the following information in the following order (R.C. 1309.616(E)):

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of either of the following specified dates:

(a) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession;

(b) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the aggregate amount of obligations secured by the security interest;

(6) The amount of the surplus or deficiency.

Under the bill, a particular phrasing of the explanation is not required. An explanation that complies substantially with the definition of "explanation" is sufficient, even if it includes minor errors that are not seriously misleading. (R.C. 1309.616(D).)

A debtor or consumer obligor is entitled without charge to one response to a request under these provisions during any six-month period in which the secured party did not send to the debtor or consumer obligor the required explanation. The secured party may require payment of a charge not exceeding \$25 for each additional response. (R.C. 1309.616(E).)

Rights of transferee of collateral

The bill prescribes the rights acquired by persons who as transferees act in good faith. Under the bill, a secured party's disposition of collateral after default

transfers to a transferee for value all of the debtor's rights in the collateral, discharges the security interest under which the disposition is made, and discharges any subordinate security interest or other subordinate lien other than the liens specified in R.C. 1309.109(D). (R.C. 1309.617(A).)

A transferee who acts in good faith takes free of the rights and interests described in the immediate preceding paragraph, even if the secured party fails to comply with R.C. Chapter 1309. or the requirements of any judicial proceeding. If a transferee does not take free of the rights and interests described in the first paragraph of this portion of this analysis, the transferee takes the collateral subject to the debtor's rights in the collateral, the security interest or agricultural lien under which the disposition is made, and any other security interest or other lien. (R.C. 1309.617(B) and (C).)

Rights and duties of certain secondary obligors

Under the bill, a secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor receives an assignment of a secured obligation from the secured party, receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party, or is subrogated to the rights of a secured party with respect to collateral. An assignment, transfer, or subrogation described above is not a disposition of collateral after default under the bill and relieves the secured party of further duties under R.C. Chapter 1309. (R.C. 1309.618(A) and (B).)

Transfer of record or legal title

The bill provides that a transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office must accept the transfer statement, promptly amend its records to reflect the transfer, and, if applicable, issue a new appropriate certificate of title in the name of the transferee.

A transfer of the record or legal title to collateral to a secured party under the immediate preceding paragraph or otherwise is not of itself a disposition of collateral under new R.C. Chapter 1309. and does not of itself relieve the secured party of its duties under that chapter. (R.C. 1309.619(B) and (C).)

As used in these provisions, "transfer statement" means a record authenticated by a secured party that states all of the following (R.C. 1309.619(A)):

(1) The debtor has defaulted in connection with an obligation secured by specified collateral.

(2) The secured party has exercised its post-default remedies with respect to the collateral.

(3) By reason of the exercise, a transferee has acquired the rights of the debtor in the collateral.

(4) The name and mailing address of the secured party, debtor, and transferee.

Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral

The bill contains strict foreclosure provisions, whereby the secured party acquires the debtor's interest in the collateral without the need for a sale or other disposition. Under the bill, a secured party generally may accept collateral in full or partial satisfaction of the obligation it secures only if all of the following apply (R.C. 1309.620(A)):

(1) The debtor consents to the acceptance.

(2) The secured party, within the applicable time frame prescribed by the bill, does not receive a notification of objection to the proposal authenticated by a person to whom the secured party was required to send a proposal or any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal.

(3) If the collateral is consumer goods, the debtor does not possess the collateral when the debtor consents to the acceptance.

(4) The bill otherwise does not require the secured party to dispose of the collateral, or the debtor waives the requirement under the bill's waiver provisions.

A purported or apparent acceptance of collateral under these provisions is not effective unless the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor, and the conditions discussed in the immediate preceding paragraphs of this portion of this analysis are met. (R.C. 1309.620(B).)

For purposes of this new Revised Code section both of the following apply (R.C. 1309.620(C)):

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default.

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or if the secured party sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained, in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures, and does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

To be effective, a notification of objection must be received by the secured party, in the case of a person to whom the proposal was sent pursuant to the bill's provisions governing a notification of proposal to accept collateral, within 20 days after notification was sent to that person, and in all other cases, within 20 days after the last notification was sent or, if a notification was not sent, before the debtor consents to the acceptance (R.C. 1309.620(D)).

A secured party who has taken possession of collateral is required to dispose of the collateral in accordance with the bill within the specified time if 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods, or 60% of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods. To comply with this requirement, the bill requires the secured party to dispose of the collateral within 90 days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default. (R.C. 1309.620(E) and (F).)

The bill provides that in a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures (R.C. 1309.620(G)).

Notification of proposal to accept collateral

The bill specifies certain kinds of claimants that a secured party must notify of its intention to accept collateral. A secured party who desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to all of the following (R.C. 1309.621(A)):

(1) Any person from whom the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder who, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date;

(3) Any other secured party who, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, rule, or treaty described in R.C. 1309.311(A).

A secured party who desires to accept collateral in partial satisfaction of the obligation it secures is required to send its proposal to any secondary obligor in addition to the persons described in items (1) to (3) above (R.C. 1309.621(B)).

Effect of acceptance of collateral

The bill provides that a secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures does all of the following (R.C. 1309.622(A)):

- (1) Discharges the obligation to the extent consented to by the debtor;
- (2) Transfers to the secured party all of a debtor's rights in the collateral;
- (3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (4) Terminates any other subordinate interest.

A subordinate interest is so discharged or terminated even if the secured party fails to comply with R.C. Chapter 1309.

Right to redeem collateral

Under the bill, a debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral. To redeem collateral, a person must tender fulfillment of all obligations secured by the collateral and the reasonable expenses and attorney's fees described in the bill. (R.C. 1309.623(A) and (B).)

A redemption may occur at any time before a secured party has collected collateral as permitted by the bill, has disposed of collateral or entered into a contract for its disposition as permitted by the bill, or has accepted collateral in full or partial satisfaction of the obligation it secures as permitted by the bill (R.C. 1309.623(C)).

Waiver

The bill permits a debtor or secondary obligor to waive the right to notification of disposition of collateral that is required by the bill only by an agreement to that effect entered into and authenticated after default. A debtor may waive the right to require disposition of collateral that is given by the bill only by an agreement to that effect entered into and authenticated after default. (R.C. 1309.623.)

Remedies for secured party's failure to comply with R.C. Chapter 1309.

The bill contains remedies available to those who are aggrieved by a secured party's failure to comply with R.C. Chapter 1309. Under the bill, if it is established that a secured party is not proceeding in accordance with this R.C. Chapter 1309., a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions (R.C. 1309.625(A)).

A person generally is liable for damages in the amount of any loss caused by a failure to comply with R.C. Chapter 1309. Loss caused by a failure to comply with a request for an accounting may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing. (R.C. 1309.625(B).)

Except as provided in the provisions relating to the nonliability and limited liability of a secured party, both of the following apply (R.C. 1309.625(C)):

(1) A person who, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under the immediate preceding paragraph for its loss.

(2) If the collateral is consumer goods, a person who was a debtor or a secondary obligor at the time a secured party failed to comply with the bill's default provisions may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

A debtor whose deficiency is eliminated under the deficiency determination provisions may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced may not recover

otherwise for noncompliance with the default provisions relating to collection, enforcement, disposition, or acceptance. (R.C. 1309.625(D).)

In addition to any damages recoverable, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person who does any of the following (R.C. 1309.625(E)):

(1) Fails to comply with the additional duties of a secured party who has control of collateral;

(2) Fails to comply with the duties of a secured party if an account debtor has been notified of an assignment;

(3) Files a record that the person is not entitled to file under the bill's filing provisions;

(4) Fails to cause the secured party of record to file or send a termination statement as required by the bill;

(5) Fails to comply with the requirement that a secured party send the debtor an explanation of calculation and whose failure is part of a pattern, or consistent with a practice, of noncompliance;

(6) Fails to send a record to a consumer obligor waiving the secured party's right to a deficiency.

A debtor or consumer obligor may recover damages and, in addition, \$500 in each case from a person who, without reasonable cause, fails to comply with a request of a debtor for an accounting. A recipient of a request under that provision who never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request.

If a secured party fails to comply with a request regarding a list of collateral or a statement of account, the secured party may claim a security interest only as shown in the statement included in the request as against a person who is misled reasonably by the failure. (R.C. 1309.625(F) and (G).)

Action in which deficiency or surplus is in issue

The bill contains provisions that address those situations in which the amount of a deficiency or surplus is in issue. Under the bill, in an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following apply (R.C. 1309.626(A)):

(1) A secured party is not required to prove compliance with the default provisions of the bill relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the bill's default provisions.

(3) Except as provided by the provisions relating to the nonliability of a secured party, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the default provisions of the bill relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of the proceeds of the collection, enforcement, disposition, or acceptance, or the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the default provisions relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of the immediate preceding paragraph, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated as prescribed by the bill, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

Determination of whether conduct was commercially reasonable

The bill contains guidelines for determining whether the conduct of a secured party is commercially reasonable. The bill provides that the fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner (R.C. 1309.627(A)).

A disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner on any recognized market, at the price current in any recognized market at the time of the disposition, or otherwise in

conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition (R.C. 1309.627(B)).

A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved in a judicial proceeding, by a bona fide creditors' committee, by a representative of creditors, or by an assignee for the benefit of creditors. Approval by any of the parties specified in the immediate preceding items (1) to (4) does not have to be obtained, and lack of approval by any of those parties does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable. (R.C. 1309.627(C) and (D).)

Nonliability and limitation on liability of secured party; liability of secondary obligor

The bill contains provisions that prevent a secured party from incurring liability to unknown persons. It provides that unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person, the secured party is not liable to the person, or to a secured party or lienholder who has filed a financing statement against the person, for failure to comply with R.C. Chapter 1309., and the failure of the secured party to comply with R.C. Chapter 1309. does not affect the liability of the person for a deficiency (R.C. 1309.628(A)).

A secured party is not liable because of its status as secured party:

(1) To a person who is a debtor or obligor, unless the secured party knows that the person is a debtor or obligor, the identity of the person, and how to communicate with the person; or

(2) To a secured party or lienholder who has filed a financing statement against a person, unless the secured party knows that the person is a debtor, and the identity of the person (R.C. 1309.628(B)).

Under the bill, a secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held or an obligor's representation concerning the purpose for which a secured obligation was incurred (R.C. 1309.628(C)).

A secured party is not liable to any person under the provisions relating to the remedies for a secured party's failure to comply with R.C. Chapter 1309. for

the secured party's failure to comply with the provisions relating to the explanation of the calculation of a surplus or deficiency. In addition, a secured party not liable for such a failure more than once with respect to any one secured obligation. (R.C. 1309.628(D).)

PART 7--TRANSITION

Transition

General rules

In transitioning to the new Secured Transactions Law, the general rule stated by the bill is that the terms of the bill apply to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the bill's effective date (R.C. 1309.702(A)). There are exceptions for transactions and liens that (1) were not governed by current R.C. Chapter 1309., (2) were validly entered into under current R.C. Chapter 1309., and (3) would be subject to the terms of the bill if they had been entered into after the bill's effective date. These types of transactions and liens remain valid after the bill's effective date and may be terminated, completed, consummated, or enforced under current law or under the bill. Examples of these types of transactions and liens include agricultural liens and security interests in commercial tort claims. (R.C. 1309.102(B).)

The bill establishes that judicial proceedings commenced before the bill's effective date are not affected by the bill and continue to be subject to current law (R.C. 1309.702(C)).

Perfected security interests

If a security interest enforceable before the bill's effective date also would be a perfected security interest under the bill, no further action is needed for the security interest to be a perfected security interest (R.C. 1309.703(A)). A security interest that is enforceable and perfected before the bill's effective date but does not satisfy the requirements for enforceability under the bill generally is perfected until July 1, 2002, but remains enforceable after that date only if the security interest becomes enforceable under the bill before that date. It remains perfected after July 1, 2002, only if the perfection requirements of the bill are satisfied before that date. (R.C. 1309.703(B).)

Unperfected security interests

Security interests that are enforceable but unperfected before the bill's effective date remain enforceable for one year after the bill's effective date and thereafter if the appropriate steps for attachment under the bill are taken before the one-year period expires. The security interest becomes a perfected security

interest on the bill's effective date if it satisfies the bill's perfection requirements at that time, otherwise it becomes perfected when the requirements are satisfied. (R.C. 1309.704.)

Effectiveness of action taken before bill's effective date

Perfection other than by filing

If perfection other than by filing a financing statement would be a valid perfection step before the bill's effective date, and if a security interest attaches within one year after the bill's effective date, then the security interest becomes a perfected security interest upon attachment. However, the security interest becomes unperfected one year after the bill's effective date unless the requirements for attachment and perfection under the bill are satisfied within that period. (R.C. 1309.705(A).)

Perfection by filing: ineffective filings

Financing statements that were filed before the bill's effective date and which would not have perfected a security interest under current law may be effective to perfect a security interest under the bill if the filing complies with the requirements of the bill (R.C. 1309.705(B)).

Perfection by filing: change in applicable law

A financing statement filed in the proper jurisdiction before the bill's effective date remains effective for all purposes, despite the fact that the bill would require filing a financing statement in a different jurisdiction. However, except as otherwise provided, such a financing statement becomes ineffective at the earlier of the time it would have ceased to be effective under the law in effect before the bill's effective date, or June 30, 2006. (R.C. 1309.705(C).) The June 30, 2006, date applies to a financing statement that is filed against a transmitting utility before the bill's effective date and that satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the law in effect before the bill's effective date, only to the extent that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement. (R.C. 1309.705(E).)

Continuing effectiveness of filed financing statement

A financing statement filed before the bill's effective date may be continued only by filing in the appropriate state and office under the bill. However, a continuation statement filed before the effective date of the bill is effective to

continue the effectiveness of the financing statement if the bill prescribes the same jurisdiction and filing office. (R.C. 1309.705(D).)

Continuation statements

A financing statement that includes a financing statement filed before the bill's effective date, and a continuation statement filed after that date is effective only if it satisfies the bill's requirements for an initial financing statement (R.C. 1309.705(F)).

Initial financing statements

The bill addresses continuing the effectiveness of financing statements that are filed in the proper location before the bill's effective date but that would be filed in the wrong location under the bill. Filing a continuation statement in the formerly correct location would not be effective. Filing an initial financing statement that complies with the bill's requirements continues the effectiveness of the financing statement that was filed before the bill's effective date. (R.C. 1309.706.)

Amendments to pre-effective-date financing statements

After the bill's effective date, 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 the bill. 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. (R.C. 1309.707(B).)

Except as otherwise provided, if Ohio law governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the bill's effective date only if one of the following applies (R.C. 1309.707(C)):

- (1) The pre-effective-date financing statement and an amendment are filed in the office specified in the bill.
- (2) An amendment is filed in the office specified in the bill, concurrently with, or after the filing in that office of, an initial financing statement that satisfies the bill.
- (3) An initial financing statement that provides the information as amended and satisfies the bill is filed in the appropriate office.

If Ohio law governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under the bill. The effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the effective date of this act by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless a satisfactory initial financing statement has been filed in the appropriate office specified by the law, as the office in which to file a financing statement. (R.C. 1309.707(D) and (E).)

Persons entitled to file initial financing statement or continuation statement

Under the bill, a person may file an initial financing statement or a continuation statement if the secured party of record authorizes the filing and the filing is necessary to continue the effectiveness of a financing statement filed before July 1, 2001, or it is necessary to perfect or continue the perfection of a security interest (R.C. 1309.708).

Priority

Generally, R.C. Chapter 1309. determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, the law in effect at the time the priorities of the claim were established determines priority. (R.C. 1309.709.)

The priority of a security interest that becomes enforceable when the bill becomes effective dates from July 1, 2001, if the security interest is perfected by filing a financing statement before July 1, 2001, but that filing would not have been effective prior to the bill's effective date. However, this does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement. (R.C. 1309.709.)

**OTHER CHANGES IN THE UNIFORM COMMERCIAL CODE
(AS ADOPTED IN OHIO)**

General provisions

Definitions

The bill modifies the definitions of certain terms as used in the Revised Code chapters governing sales; commercial paper; bank deposits and collections; letters of credit; warehouse receipts, bills of lading, and other documents of title; investment securities; secured transactions; and leases. The following definitions apply to those chapters unless the context otherwise requires, and subject to additional definitions contained in those chapters:



(1) "Buyer in ordinary course of business" means a person who buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person who sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under the Sales Law may be a buyer in ordinary course of business. A person who acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in the ordinary course of business. (R.C. 1301.01(I).)

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. "Security interest" also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to R.C. Chapter 1309. The special property interest of a buyer of goods on identification of those goods to a contract for sale under the Sales Law provision governing the passing of title to goods is not a security interest, but a buyer also may acquire a security interest by complying with R.C. Chapter 1309. Except as otherwise provided in the Sales Law provision governing a seller's shipment of goods under reservation of a security interest, the right of a seller or lessor of goods under the Sales or Lease Law is not a security interest, but a seller or lessor also may acquire a security interest by complying with R.C. Chapter 1309. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under the Sales Law provision governing the passing of title to goods is limited to a reservation of a security interest. A lease-purchase agreement as defined in R.C. 1351.01(F) can never be intended as security. (R.C. 1301.01(KK)(1).)

Applicable law

Continuing law provides that generally, when a transaction bears a reasonable relation to Ohio and also to another state or nation, the parties may agree that the law either of Ohio or of the other state or nation governs their rights and duties. In the absence of an agreement of that nature, R.C. Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. apply to transactions bearing an appropriate relation to Ohio. (R.C. 1301.05(A).)

Under the bill, if the perfection provisions, including the effect of perfection or nonperfection, and the priority of security interests and agricultural liens of R.C. 1309.301 to 1309.307 in the bill, specify the applicable law, those provisions govern, and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified (R.C. 1301.05(B)(6)).

Sales Law

Assignment of rights

The bill modifies the existing Sales Law provision governing the assignment of rights by providing that except as otherwise provided in R.C. 1309.406 in the bill, which governs the discharge of an account debtor, notification of assignment, identification and proof of assignment, and ineffective restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, increase materially the burden or risk imposed on the other party by the contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise. (R.C. 1302.13(B)(1).)

Under the bill, the creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance as described in the preceding paragraph unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. In any case, the creation, attachment, perfection, and enforcement of the security interest remain effective, but the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer. A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement. (R.C. 1302.13(B)(2).)

Buyer's rights to goods; replevin

The bill modifies existing law pertaining to a buyer's rights to goods by providing that subject to the provisions described in the following two paragraphs and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the Sales

Law provision governing special property and insurable interest in goods by identification in a certain manner, may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if: (1) *in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract* (added by the bill), or (2) in all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price. (R.C. 1302.46(A).)

The bill provides that the buyer's right to recover the goods under clause (1), above, vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver (R.C. 1302.46(B)).

As in current law, if the identification creating the buyer's special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale (R.C. 1302.46(C)).

The bill provides that in the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver (R.C. 1302.90(C)).

Letters of Credit Law

The bill adds a new section in the Letters of Credit Law with the following provisions:

An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation. So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document presented under a letter of credit, the security interest continues and is subject to R.C. Chapter 1309., but:

(1) A security agreement is not necessary to make the security interest enforceable under R.C. 1309.203(B)(3) (conditions for the enforceability of a security interest against the debtor and third parties with respect to collateral);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting

security interest in the document so long as the debtor does not have possession of the document. (R.C. 1305.18.)

Investment Securities Law

Applicability; choice of law

The bill revises the rules specified in existing law to determine a "securities intermediary's jurisdiction" for purposes of the law. The revised rules are as follows (R.C. 1308.05(E)):

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of R.C. Chapter 1308. or 1309., that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1), above, does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If paragraphs (1) and (2), above, do not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If paragraphs (1), (2), and (3), above, do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If paragraphs (1), (2), (3), and (4), above, do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

Rights of purchaser

The bill modifies existing law governing the rights of a purchaser by providing that, generally, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer, and eliminating the condition for acquisition of those rights *upon delivery* of the security to a purchaser (R.C. 1308.16(A)).

Purchaser's "control"

The bill adds the following provision to the circumstances specified in existing law in which a purchaser has "control" of a security entitlement: a purchaser has "control" if another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges having control on behalf of the purchaser (R.C. 1308.24(D)(3)).

Delivery of certificated security

The bill modifies existing law specifying the circumstances in which the delivery of a certificated security occurs by providing that delivery occurs when a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (a) registered in the name of the purchaser, (b) payable to the order of the purchaser, or (c) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank (R.C. 1308.27(A)(3)).

Rights of purchaser of security entitlement from entitlement holder

The bill modifies existing law governing the rights of a purchaser of a security entitlement from an entitlement holder in the following manners:

It provides that *in a case not covered by the priority rules in R.C. Chapter 1309. or the rules described in the following paragraph* (added by the bill), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control (R.C. 1308.60(A)).

It provides that except for the provision that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary, purchasers who have control rank according to priority in time of any of the following (R.C. 1308.60(C) and (D)):

(1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control by becoming the entitlement holder under current law;

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser

obtained control upon the securities intermediary's agreement that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder under current law;

(3) If the purchaser obtained control under the bill through another person that has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges having control on behalf of the purchaser, the time on which priority would be based if the other person were the secured party.

Lease Law

Priority of lessor's creditor's security interest

The bill provides that, except as provided in R.C. 1309.317 (lessee of goods taking free of unperfected security interest or agricultural lien), R.C. 1309.321 (lessee in the ordinary course of business), and R.C. 1309.323 (lessee of goods taking free of security interest to the extent it secures advances), a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor (R.C. 1310.35(C)).

OTHER CHANGES

Repossession of motor vehicle

The bill modifies current law to provide that prior to the reissuance of a certificate of title if repossession of a motor vehicle is had upon default in performance of the terms of a security agreement as provided in R.C. Chapter 1309., the secured party must have notified the debtor by sending a reasonable authenticated notification of disposition as required by R.C. 1309.611(B) (R.C. 4505.10(A)).

Banking Law: effects of securitization transaction

The bill provides that notwithstanding any other provision of law, to the extent set forth in the transaction documents relating to a "securitization" (see definition below) (R.C. 1109.75(A)):

(1) Any property, assets, or rights purported to be transferred, in whole or in part, in a securitization are deemed to no longer be the property, assets, or rights of the transferor.

(2) A transferor in a securitization, the transferor's creditors, or a bankruptcy trustee, receiver, or similar person in an insolvency proceeding involving the transferor have no rights whatsoever to reacquire, reclaim, recover,

redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be transferred, in whole or in part, by the transferor.

(3) In the event of the transferor's bankruptcy, receivership, or other insolvency proceedings, the property, assets, or rights purported to have been transferred by the transferor, in whole or in part, in a securitization are not deemed to be part of the transferor's property, assets, rights, or estate.

Nothing in these provisions is deemed to require any securitization transaction to be treated as a sale for federal or state tax purposes or to preclude the treatment of any securitization transaction as a debt for federal or state tax purposes (R.C. 1109.75(B)).

The bill defines "securitization" as a transfer of financial assets by a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) to a special purpose entity established to issue securities supported by the financial assets to investors (R.C. 1109.75(C)).

EFFECTIVE DATE AND EMERGENCY CLAUSE

The bill states that its provisions take effect on July 1, 2001 (Section 4).

The bill contains an emergency clause stating that Revised Article 9 of the Uniform Commercial Code contains a nationally uniform effective date established by the Uniform Law Commissioners and complications may result in the area of secured transactions if former Article 9 is in effect in Ohio on July 1, 2001 (Section 5).

COMMENT

This bill generally was drafted in conformity with the precise language of the National Conference of Commissioners on Uniform State Laws' Revised Article 9 of the Uniform Commercial Code, without regard to rules of grammar, standard bill drafting practices, consistency with the R.C., and concerns for clarity.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-20-01	pp. 224-225
Reported, S. Judiciary Civil Justice	04-04-01	p. 269
Passed Senate (31-2)	04-04-01	pp. 271-273
Reported, H. Civil & Commercial Law S0074-RH.124/jc	05-30-01	p. 609



TABLE I

Location in bill of existing Revised Code provisions that contain Article 9 of the Uniform Commercial Code

Existing Revised Code Section	Section in the bill
1309.01(A)(1) to (16)	1309.102(A)(2), (3), (11), (12), (28) to (30), (32), (42), (44), (47), (55), (68), (72), (73), and (80)
1309.02	1309.109(A) and (B)
1309.03(A)(1) and (2), (C)(1) and (2), (D), and (E)	1309.301
(A)(4), (B)(1), (2), and (3), and (C)(5)	1309.316
(B)(1) and (2)	1309.303
(B)(4)	1309.337
(C)(3) and (4)	1309.307
(F)	1309.305
1309.04 (all except (A))	1309.109(C) and (D)
1309.05	1309.103(B)
1309.06	Repealed
1309.07	1309.102(A)(23), (33), (34), and (49)
1309.08	1309.108(A)
1309.10	Repealed
1309.11	1309.110
1309.111	Repealed
1309.112(A)(1) to (4) and (6)	1309.102(A)(14) to (17) and (49)
(A)(5)	1309.106
(B)	1309.308(F) and (G)
(C)	1309.108(B) and (D)
(D)	1309.309, 1309.312, and 1309.314
(E)	1309.328
(F)	1309.313
(B), (D), and (F)	1309.203(B)(3)(c), (H), and (I)
1309.113	1309.206
(B)	1309.309
1309.12	1309.201(A) and (D)
1309.13	1309.202

Existing Revised Code Section	Section in the bill
1309.14(A), (C), and (D) (D)	1309.203(A), (B), and (C) 1309.201(B) and (D)
1309.15	1309.204
1309.16	1309.205
1309.17(A)	1309.403(B) and (C)
1309.18	1309.207(A) and (B)
1309.19	1309.210
1309.20(A) and (B) (C) (D)	1309.317 1309.102(A)(52) 1309.323(B)
1309.21(A) (A) and (B) (C) and (D)	1309.309 1309.310 1309.311
1309.22(A)	1309.308(A)
1309.23	1309.312
1309.24	1309.306 and 1309.313
1309.25 (A)	1309.315 1309.102(A)(64)
1309.26(A) (D)	1309.320 1309.323(D)
1309.27	1309.330(A) and (B)
1309.28	1309.331
1309.29	1309.333
1309.30	1309.401
1309.31(A), (E), and (F) (C) and (D) (G)	1309.322 1309.324(A) and (B) 1309.323(A)
1309.32(A) to (G) (A)(1) and (2) (H)	1309.334 1309.102(A)(40) and (41) 1309.604(C) and (D)
1309.33	1309.335
1309.34	1309.336

Existing Revised Code Section	Section in the bill
1309.35 (B)(2) and (3) (C) (D)	1309.339 1309.317(C) 1309.321(C) 1309.323(F)
1309.36	1309.402
1309.37(A) (B) (C) and (D)	1309.404(A) 1309.405(A) and (B) 1309.406(A), (B)(1), and (D)
1309.38	1309.501
1309.39(A) (A), (D), (E), and (F) (C) (D) (F) (G) (H)	1309.504 and 1309.521 1309.502(A) to (C) 1309.512(A), (B), and (C) 1309.512 1309.502 1309.503 and 1309.507 1309.506(A)
1309.40(A) (B)(1), (C), and (F) (C) (D) (D), (E), and (H) (G) (H)	1309.516(A) 1309.515(A), (C), and (F) 1309.515(C) to (E) and 1309.522 1309.519 1309.525 1309.523(A) 1309.523(C)
1309.401	1309.528
1309.402	Not retained
1309.41	1309.513
1309.42	1309.514 and 1309.525
1309.43	1309.512 and 1309.525
1309.431	1309.505
1309.44(A) (B) (C) (D) (E)	1309.601(A) to (C) 1309.601(D) 1309.602 and 1309.603 1309.604(A) 1309.601(E) and (F)

Existing Revised Code Section	Section in the bill
1309.45(A) (B) (B)(1)	1309.607(A) 1309.608(B) 1309.607(C)
1309.46	1309.609
1309.47(A) (B) (C) (D) (E)	1309.610(A) and 1309.615 1309.615 1309.610(B) and (C), 1309.611, and 1309.624 1309.617(A) and (B) 1309.618
1309.48 (B)	1309.620 1309.621
1309.49	1309.623 and 1309.624
1309.50(A) (B)	1309.625(A) and (C) 1309.627
1310.31(C)	1309.407

TABLE II**Source in existing Revised Code provisions that contain Article 9 of Uniform Commercial Code of sections in the bill**

Section in the bill	Existing Revised Code Section
1309.101	New substantive section
1309.102(A)(20) (A)(2), (3), (11), (12), (28) to (30), (32), (42), (44), (47), (55), (68), (72), (73), and (80) (A)(23), (33), (34), and (48) (A)(14) to (17) and (49) (A)(52) (A)(64) (A)(40) and (41)	1302.39(C) 1309.01(A)(1) to (16) 1309.07 1309.112(A)(1) to (4) and (6) 1309.20(C) 1309.25(A) 1309.32(A)(1) and (2)
1309.103(B) (A) and (C) to (H)	1309.05 New substantive language
1309.104	New substantive section
1309.105	New substantive section
1309.106	1309.112(A)(5)
1309.107	New substantive section
1309.108(A) (B) and (D) (C) and (E)	1309.08 1309.112(C) New substantive language
1309.109(A) and (B) (C) and (D)	1309.02 1309.04 (all except (A))
1309.110	1309.11
1309.201(A) and (D) (B) and (C)	1309.12 1309.14(D)
1309.202	1309.13
1309.203(A), (B), and (C) (D) to (G) (H) and (I)	1309.14(A), (B), and (C) New substantive language 1309.112(B), (D), and (F)
1309.204	1309.15
1309.205	1309.16
1309.206	1309.113

Section in the bill	Existing Revised Code Section
1309.207(A) and (B) (C) and (D)	1309.18 New substantive language
1309.208	New substantive section
1309.209	New substantive section
1309.210	1309.19
1309.301	1309.03(A)(1) and (2), (C)(1) and (2), (D), and (E)
1309.302	New substantive section
1309.303	1309.03(B)(1) and (2)
1309.304	New substantive section
1309.305	1309.03(F)
1309.306	1309.24 and new substantive language
1309.307	1309.03(C)(3) and (4)
1309.308(A) (F) and (G) (B) to (E)	1309.22(A) 1309.112(B) New substantive language
1309.309	1309.21(A), 1309.112(D), and 1309.113(B)
1309.310	1309.21(A) and (B)
1309.311	1309.21(C) and (D)
1309.312	1309.23
1309.313	1309.112(F), 1309.24, and new substantive language
1309.314	1309.112(D) and new substantive language
1309.315	1309.25 and new substantive language
1309.316	1309.03(A)(4), (B)(1), (2), and (3), and (C)(5)
1309.317	1309.20 and 1310 .35(B)(2) and (3)
1309.318	New substantive section
1309.319	New substantive section
1309.320	1309.26(A) and new substantive language
1309.321	1310.35(C) and new substantive language
1309.322	1309.31(A), (E), and (F) and new substantive language

Section in the bill	Existing Revised Code Section
1309.323(A) (B) (D) (F)	1309.31(G) 1309.20(D) 1309.26(D) 1310.35(D)
1309.324	1309.31(C) and (D) and new substantive language
1309.325	New substantive section
1309.326	New substantive section
1309.327	New substantive section
1309.328	1309.112(E)
1309.329	New substantive section
1309.330	1309.27 and new substantive language
1309.331	1309.28 and new substantive language
1309.332	New substantive section
1309.333	1309.29
1309.334	1309.32 and new substantive section
1309.335	1309.33
1309.336	1309.34
1309.337	1309.03(B)(4) and new substantive language
1309.338	New substantive section
1309.339	1309.35
1309.340	New substantive section
1309.341	New substantive section
1309.342	New substantive section
1309.401	1309.30
1309.402	1309.36
1309.403(B) and (C) (A) and (D) to (F)	1309.17(A) New substantive language
1309.404(A) (B) to (E)	1309.37(A) New substantive language
1309.405(A) and (B) (C) and (D)	1309.37(B) New substantive language
1309.406(A), (B)(1), and (D) (B)(2) and (3), (C), and (E) to (J)	1309.37(C) and (D) New substantive language

Section in the bill	Existing Revised Code Section
1309.407	1310.31(C)
1309.408	New substantive section
1309.409	New substantive section
1309.501	1309.38
1309.502(A) to (C) (D)	1309.39(A), (D), (E), and (F) New substantive language
1309.503	1309.39(G) and new substantive language
1309.504	1309.39(A)
1309.505	1309.431
1309.506(A)	1309.39(H)
1309.506 (balance)	New substantive language
1309.507	1309.39(G)
1309.508	New substantive section
1309.509	New substantive section
1309.510	New substantive section
1309.511	New substantive section
1309.512	1309.39(C) and 1309.43
1309.513	1309.41
1309.514	1309.42
1309.515(A) and (C) to (F) (B) and (G)	1309.40(B)(1), (C), and (F) New substantive language
1309.516(A) (B) to (D)	1309.40(A) New substantive language
1309.517	New substantive section
1309.518	New substantive section
1309.519	1309.40(D)
1309.520	New substantive section
1309.521	1309.39(A)
1309.522	1309.40(C)
1309.523(A) (C) (balance)	1309.40(G) (H) New substantive language
1309.524	New, derived from 1304.07

Section in the bill	Existing Revised Code Section
1309.525	1309.40(D), (E), and (H) 1309.42 1309.43
1309.526	Partly from Uniform Consumer Credit Code; balance new
1309.527	Partly from Uniform Consumer Credit Code; balance new
1309.528	1309.401
1309.529	New substantive section
1309.601(A) to (C) (D) (E) and (F) (G)	1309.44(A) (B) (E) New substantive language
1309.602	1309.44(C)
1309.603	1309.44(C)
1309.604(A) (B) (C) and (D)	1309.44(D) New substantive language 1309.32(H)
1309.605	New substantive section
1309.606	New substantive section
1309.607(A) (C) (D) and (E)	1309.45(A) (B)(1) New substantive language
1309.608(A) (B)	New substantive language 1309.45(B)
1309.609	1309.46
1309.610(A) (B) and (C) (D) to (F)	1309.47(A) (C) New substantive language
1309.611	1309.47(C)
1309.612	New substantive section
1309.613	New substantive section
1309.614	New substantive section
1309.615	1309.47(A) and (B)
1309.616	New substantive section

Section in the bill	Existing Revised Code Section
1309.617(A) and (B) (C)	1309.47(D) New substantive language
1309.618	1309.47(E)
1309.619	New substantive section
1309.620	1309.48
1309.621	1309.48(B)
1309.622	New substantive section
1309.623	1309.49
1309.624	1309.47(C) and 1309.49
1309.625(A) and (C) (B) and (D) to (G)	1309.50(A) New substantive language
1309.626	New substantive section
1309.627	1309.50(B)
1309.628	New substantive section
1309.701	New substantive section
1309.702	New substantive section
1309.703	New substantive section
1309.704	New substantive section
1309.705	New substantive section
1309.706	New substantive section
1309.707	New substantive section
1309.708	New substantive section
1309.709	New substantive section