



Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Judiciary and Ethics)

Sens. Obhof and Kearney, Bacon, Beagle, Jones, Sawyer, Schiavoni, Wagoner, Coley, Daniels, Faber, Hughes, Lehner, Manning, Oelslager, Patton

BILL SUMMARY

- Modifies the definitions of "authenticate," "certificate of title," "jurisdiction of organization," and "registered organization" and defines "public organic record."
- Modifies what is meant by a secured party's "control of electronic chattel paper" by providing that a secured party has control if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.
- Provides that the location of 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 the state that the registered organization, branch, or agency designates, including its main office, home office, or other comparable office.
- Provides rules that apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction and provides rules for when a financing statement naming an original debtor is filed and the new debtor is located in another jurisdiction.
- Updates references to certain types of collateral regarding the basic priority of security interests.
- Modifies the scope of the rules on the sale of a payment intangible or promissory note under certain specified circumstances.

* This analysis was prepared before the report of the House Judiciary and Ethics Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Modifies the law regarding the name of the debtor on financing statements if the debtor is a registered organization or the collateral is held in a trust that is a registered organization or in a trust that is not a registered organization or is being administered by a decedent's personal representative and the name of the debtor who is an individual.
- Provides that if the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor so that the financing statement becomes seriously misleading, the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading and the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes misleading unless certain circumstances occur.
- Allows a person to file in the filing office an information statement with respect to a record if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Ohio law.
- Requires the information statement discussed in the previous dot point to contain certain specified information.
- Requires that under certain circumstances, the debtor's name be inserted on a UCC financing statement or a UCC financing statement amendment exactly as it appears on the debtor's current driver's license or identification card issued in Ohio, if one exists.
- Includes uncodified provisions regarding the effectiveness of certain provisions of the bill, including perfected security interests and the filing of financing statements, before the bill takes effect.
- Provides that the Joint Legislative Ethics Committee is the appropriate ethics commission under the Ethics Law for matters relating to the public members of the Ohio Constitutional Modernization Commission.

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CONTENT AND OPERATION

Background

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. Other types of collateral include sales of payment intangibles and promissory notes, security interests created by governmental debtors, health insurance receivables, consignments, and commercial tort claims.

Filing a financing statement is the most common method to perfect a security interest in most types of property under R.C. Chapter 1309. Filing a financing statement perfects a security interest even if there is another method of perfection. "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 a sale from property subject to a security interest.

The bill enacts revisions to R.C. Chapter 1309. as proposed by the National Conference of Commissioners on Uniform State Laws.

Control of electronic chattel paper

The bill modifies existing law by providing that a secured party has control of electronic chattel paper if *a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.* A system satisfies this provision if (the bill adds the italicized language) the record or records comprising the chattel paper are created, stored, and assigned in such a manner that all of the following apply:¹

(1) A single authoritative copy of the record or records exists that is unique, identifiable, and, except as otherwise provided in (4), (5), and (6) below, unalterable.

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

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

¹ R.C. 1309.105.

(4) Copies or *amendments* (rather than "revisions" under existing law) that add or change an identified assignee of the authoritative copy may be made only with the *consent* (rather than "participation" under existing law) 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 *amendment* (rather than "revision" under existing law) of the authoritative copy is readily identifiable as authorized or unauthorized (rather than "an authorized or unauthorized revision" under existing law).

Location of debtor

R.C. 1309.307 contains certain rules for determining a debtor's location. Generally speaking 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: (1) in the state that the law of the United States designates if the law designates a state of location, (2) in 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, or (3) in the District of Columbia if neither (1) or (2) applies. The bill modifies clause (2) by providing that the registered organization, branch, or agency is located in the state it designates if the United States law authorizes it to designate its state of location *including by designating its main office, home office, or another comparable office.*²

Under existing law, a "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. The bill instead provides that a "registered organization" means an organization *formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state (added by the bill).*³

² R.C. 1309.307(F).

³ R.C. 1309.102(A)(71).

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

Under existing law, generally the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to 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 relocates the reference to a "certificate of title," so that the filing of a financing statement is not necessary if the property is subject to a statute of another jurisdiction that provides for a security interest to be indicated on *a certificate of title* as a condition or result of the security interest obtaining priority.⁴

Existing law defines a "certificate of title" as 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 collateral. The bill additionally provides that the term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.⁵

Continued perfection of security interests following change in governing law

Existing law generally provides that a security interest perfected pursuant to the law of the jurisdiction designated in R.C. 1309.301(A) (local law of the jurisdiction where the debtor is located) or 1309.305(C) (local law of the jurisdiction where the debtor is located regarding a security interest in investment property or a commodity contract or commodity account) remains perfected until the earliest of the following:⁶

- (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 a debtor and is located in another jurisdiction.

⁴ R.C. 1309.311(A)(3).

⁵ R.C. 1309.102(A)(10).

⁶ R.C. 1309.316(A).

The bill states that the following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:⁷

(1) A financing statement filed before the change of location pursuant to the law of the jurisdiction designated in R.C. 1309.301(A) or 1309.305(C) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) above becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in R.C. 1309.301(A) or 1309.305(C) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Under the bill, if a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in R.C. 1309.301(A) or 1309.305(C) and the new debtor is located in another jurisdiction, the following rules apply:⁸

(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 R.C. 1309.203(D) (when a person becomes bound as a debtor by a security agreement entered into by another person), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in R.C. 1309.301(A) or 1309.305(C) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

⁷ R.C. 1309.316(H).

⁸ R.C. 1309.316(I).

Interests that take priority over or take free of unperfected security interest

Existing law generally provides that a buyer, other than a secured party, of tangible chattel paper, tangible 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. The bill replaces the reference to *security certificate* with *certificated security*.⁹

Under existing law, a licensee of a general intangible or a buyer, other than a secured party, of *accounts, electronic chattel paper, electronic documents, general intangibles, or investment property* 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. The bill removes the italicized language and instead provides that this provision applies to a buyer, other than a secured party, of *collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security* who gives value without knowledge of the security interest and before it is perfected.¹⁰

Priority of security interests created by new debtor

Under existing law, 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 (law regarding effectiveness of financing statement if new debtor becomes bound by security agreement). Under the bill, a security interest *that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement would be ineffective to perfect the security interest but for the application of R.C. 1309.316(I)(2) (discussed above) or R.C. 1309.508* is subordinate to a security interest in the same collateral that is perfected other than by *such* a filed financing statement.¹¹

Existing law also provides that R.C. 1309.301 to 1309.342 (laws regarding perfection and priority of security interests) 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. The bill states that this provision applies to

⁹ R.C. 1309.317(B).

¹⁰ R.C. 1309.317(D).

¹¹ R.C. 1309.326(A).

conflicting security interests in the same collateral perfected by filed financing statements described in the paragraph above.¹²

Discharge of account debtor

Existing law provides that, generally, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent it does either of the following:¹³

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

(2) 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 account, chattel paper, payment intangible, or promissory note.

Under existing law, these provisions do not apply to the sale of a payment intangible or promissory note. The bill modifies existing law to state that the above provisions do not apply to the sale of a payment intangible or promissory note other than a sale pursuant to a disposition under R.C. 1309.610 (disposition of collateral after default) or an acceptance of collateral under R.C. 1309.620 (acceptance of collateral in full or partial satisfaction of an obligation).¹⁴

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

Under existing law, generally, 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 a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-

¹² R.C. 1309.326(B).

¹³ R.C. 1309.406(D).

¹⁴ R.C. 1309.406(E).

insurance receivable, or general intangible, is not effective to the extent that the term does either of the following:¹⁵

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

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

The bill modifies existing law to provide that the above provisions apply to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note (existing law) *other than a sale pursuant to a disposition under R.C. 1309.610 or an acceptance of collateral under R.C. 1309.620* (added by the bill).¹⁶

Record of a mortgage as a financing statement

Existing law provides that a record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if all of the following apply:¹⁷

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

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

(3) The record satisfies the requirements for a financing statement contained in this section other than an indication that it is to be filed in the real property records;

(4) The record is duly recorded.

The bill modifies paragraph (3) to provide as follows:

(3) The record satisfies the requirements for a financing statement contained in this section, but:

¹⁵ R.C. 1309.408(A).

¹⁶ R.C. 1309.408(B).

¹⁷ R.C. 1309.502(C).

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

(b) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom R.C. 1309.503(A)(4) (discussed below) applies.¹⁸

Name of debtor and secured party

The bill provides that a financing statement sufficiently provides the name of the debtor in all of the following situations (the bill adds the italicized language):¹⁹

(1) Generally, if the debtor is a registered organization *or the collateral is held in a trust that is a registered organization*, only if the financing statement provides the name *that is stated to be the registered organization's name* (rather than the debtor's name under existing law) on the public *organic record most recently filed with or issued or enacted by the registered organization's* jurisdiction of organization *which purports to state, amend, or restate the registered organization's name* (instead of on the public record of the debtor's jurisdiction or organization showing the debtor to have been organized);

(2) Generally, *if the collateral is being administered by the personal representative of the decedent* (rather than if the debtor is a decedent's estate), only if the financing statement provides, *as the name of the debtor*, the name of the decedent and, *in a separate part of the financing statement*, indicates that the *collateral is being administered by a personal representative* (instead of indicating that the debtor is an estate);

(3) If the *collateral is held in a trust that is not a registered organization* (instead of if the debtor is a trust or trustee acting with respect to property held in trust), only if the financing statement:

(a) Provides, *as the name of the debtor* (removes "specified"):

(i) *If the organic record of the trust specifies a name for the trust* (removes "in its organic documents"), *the name specified*; or

(ii) *If the organic record of the trust does not specify a name for the trust*, the name of the settlor *or testator* (removes the requirement that there be additional information

¹⁸ R.C. 1309.502(C).

¹⁹ R.C. 1309.503(A).

sufficient to distinguish the debtor from other trusts having one or more of the same settlors); and

(b) *In a separate part of the financing statement (removes the requirement that the financing statement indicate, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property):*

(i) *If the name is provided in accordance with paragraph (3)(a)(i) above, indicates that the collateral is held in a trust; or*

(ii) *If the name is provided in accordance with paragraph (3)(a)(ii) above, provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless additional information so indicates.*

(4) *If the debtor is an individual to whom Ohio has issued a driver's license or identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver's license or identification card;*

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

(6) In other cases:

(a) If the debtor has a name, only if *the financing statement* (rather than the name) provides the organizational (rather than the individual and organizational) name of the debtor; and

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

The bill provides that the name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under (2) above.²⁰ If Ohio has issued to an individual more than one driver's license or identification card of a kind described in (4) above, the one that was issued most recently is the one to which (4) above refers.²¹

²⁰ R.C. 1309.503(F).

²¹ R.C. 1309.503(G).

The bill defines the following terms that are referenced in the above provision:

(1) "Name of the settlor or testator" means either of the following:²²

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

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

(2) "Public organic record" means a record that is available to the public for inspection and is any of the following:²³

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

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

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

Effect of certain events on effectiveness of financing statement

Under existing law, 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.²⁴ If a debtor so changes its name that a filed financing

²² R.C. 1309.503(H).

²³ R.C. 1309.102(A)(68).

²⁴ R.C. 1309.507(A).

statement becomes seriously misleading under R.C. 1309.506 (effect of errors or omissions), both of the following apply:²⁵

(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;

(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.

The bill modifies this provision by providing that if the *name* that a filed financing statement *provides for a debtor* becomes *insufficient as the name of the debtor under R.C. 1309.503(A) (see above)* so that the financing statement becomes seriously misleading, the provisions in (1) and (2) above apply. The bill also replaces "change" in paragraphs (1) and (2) above with "filed financing statement becomes seriously misleading."

Duration and effectiveness of financing statement

Under existing law, generally, a filed financing statement is effective for five years after the date of filing.²⁶ If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed. The bill specifies that this provision applies if a filed *initial* financing statement indicates the debtor is a transmitting utility.²⁷

What constitutes a filing and the effectiveness of a filing

Existing law provides that 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.²⁸ One way a filing does not occur with respect to a record that a filing office refuses to accept is because the filing office is unable to index the record because, in the case of an amendment or correction statement the record either does not identify the initial financing statement as required by law or the record identifies an initial financing

²⁵ R.C. 1309.507(C).

²⁶ R.C. 1309.515(A).

²⁷ R.C. 1309.515(F).

²⁸ R.C. 1309.516(A).

statement whose effectiveness has lapsed under R.C. 1309.515. The bill replaces the reference to a "correction statement" with "information statement."²⁹

Existing law also states that filing does not occur with respect to a record that a filing office refuses to accept because, 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 indicate whether the debtor is an individual or an organization. The bill modifies this provision by stating that the record does not indicate whether the *name provided as the name of the debtor is the name of* an individual or an organization.³⁰ Existing law also states that if the financing statement indicates that the debtor is an organization, filing does not occur because the record does not provide a type of organization for the debtor or a jurisdiction of organization for the debtor. The bill removes this provision.³¹ The bill also makes a technical change, replacing the phrase "last name" with "surname" with respect to a debtor.³²

Claim concerning inaccurate or wrongfully filed record

Existing law makes various references to a "correction statement" with regards to filing a "correction statement" in the filing office 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. Existing law also details what the "correction statement" must do and what it does not affect. The bill changes this phrase to an "information statement" but maintains the same requirements.³³

The bill also allows a person to file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under R.C. 1309.509(D) (law regarding persons entitled to file a record).³⁴ Under the bill, such an information statement must do all of the following:³⁵

²⁹ R.C. 1309.516(B)(3)(b).

³⁰ R.C. 1309.516(B)(5)(b).

³¹ R.C. 1309.516(B)(5)(c).

³² R.C. 1309.516(B)(3)(c).

³³ R.C. 1309.518(A), (B), and (E).

³⁴ R.C. 1309.518(C).

³⁵ R.C. 1309.518(D).

(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 information statement relates to a record filed in a filing office described in R.C. 1309.501(A)(1) (the office designated for the filing or recording of a record of a mortgage on the related real property, if the collateral is as-extracted collateral or timber to be cut or the financing statement is filed as a fixture filing, and the collateral is goods that are or are to become fixtures), the date and time that the initial financing statement was filed and the information specified in R.C. 1309.502(B) (regarding contents of the financing statement);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under R.C. 1309.509(D).

Uniform form of written financing statement and amendment

Existing law provides that a filing office that accepts written records cannot refuse to accept a written initial financing statement in a specific form detailed in R.C. 1309.521 except for a reason prescribed in R.C. 1309.516(B) (details when a filing does not occur because a filing office refused to accept it). The bill provides in various places on the form that the debtor's name must be inserted exactly as it appears on the debtor's current driver's license or identification card issued by Ohio, if one exists.³⁶

Collection and enforcement by secured party

Under existing law, if so agreed, and in any event after default, a secured party may, among other things, 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.³⁷ If necessary to enable a secured party to exercise the right of a debtor to enforce a mortgage nonjudicially under the above-described provision, the secured party may record in the office in which a record of the mortgage is recorded the secured party's sworn affidavit in recordable form stating that a default has occurred and the

³⁶ R.C. 1309.521.

³⁷ R.C. 1309.607(A)(3).

secured party is entitled to enforce the mortgage nonjudicially. The bill specifies that the sworn affidavit must state that a default has occurred *with respect to the obligation secured by the mortgage*.³⁸

Definitions

Under existing law, "authenticate" means:³⁹

(1) To sign; or

(2) *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.*

The bill removes the italicized language in (2) above and instead provides that "authenticate" means to sign or, with present intent to adopt or accept a record, *to attach to or logically associate with the record an electronic sound, symbol, or process.*

The bill modifies the definition of "jurisdiction of organization," with respect to a registered organization, to mean the jurisdiction under whose law the organization is *formed or organized*.⁴⁰

Nonsubstantive changes

The bill makes other technical, nonsubstantive changes, especially changes to division references.

Uncodified provisions

Application of the bill

Unless otherwise provided in the provisions described below, the bill applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the bill takes effect. The bill provides that it does not affect an action, case, or proceeding commenced before the bill takes effect.⁴¹

³⁸ R.C. 1309.607(B)(2).

³⁹ R.C. 1309.102(A)(7).

⁴⁰ R.C. 1309.102(A)(50).

⁴¹ Section 3.

Effective date of a perfected security interest

A security interest that is a perfected security interest immediately before the bill takes effect is a perfected security interest under R.C. Chapter 1309. as amended by the bill if, when the bill takes effect, the applicable requirements for attachment and perfection under R.C. Chapter 1309. as amended by the bill are satisfied without further action.⁴² Except as otherwise provided under "**Effective date of a filed financing statement**" below, if, immediately before the bill takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under R.C. Chapter 1309. as amended by the bill are not satisfied when the bill takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under R.C. Chapter 1309. as amended by the bill are satisfied within one year after the bill takes effect.⁴³

A security interest that is an unperfected security interest immediately before the bill takes effect becomes a perfected security interest:⁴⁴

(1) Without further action, when the bill takes effect if the applicable requirements for perfection under R.C. Chapter 1309. as amended are satisfied before or at that time; or

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

Effective date of a filed financing statement

The filing of a financing statement before the bill takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under R.C. Chapter 1309. as amended by the bill.⁴⁵

The bill does not render ineffective an effective financing statement that, before the bill takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in R.C. Chapter 1309. as it existed before amendment by the bill. However, except as otherwise provided in

⁴² Section 4(A).

⁴³ Section 4(B).

⁴⁴ Section 4(B).

⁴⁵ Section 5(A).

the provisions described below, the financing statement ceases to be effective when any of the following occur:⁴⁶

(1) If the financing statement is filed in Ohio, at the time the financing statement would have ceased to be effective had the bill not taken effect;

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

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

(b) June 30, 2018.

The filing of a continuation statement after the bill takes effect does not continue the effectiveness of a financing statement filed before the bill takes effect. However, upon the timely filing of a continuation statement after the bill takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Chapter 1309, as amended by the bill, the effectiveness of a financing statement filed in the same office in that jurisdiction before the bill takes effect continues for the period provided by the law of that jurisdiction.⁴⁷

The date of June 30, 2018, as the date the financing statement ceases to be effective applies to a financing statement that, before the bill takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in R.C. Chapter 1309, as it existed before amendment by the bill, only to the extent that R.C. Chapter 1309, as amended by the bill provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.⁴⁸

A financing statement that includes a financing statement filed before the bill takes effect and a continuation statement filed after the bill takes effect is effective only to the extent that it satisfies the requirements of R.C. 1309.501 to 1309.529 as amended by the bill for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of R.C. 1309.503(A)(2) as amended by the

⁴⁶ Section 5(B).

⁴⁷ Section 5(C).

⁴⁸ Section 5(D).

bill. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of R.C. 1309.503(A)(3) as amended by the bill.⁴⁹

Effectiveness of a filed initial financing statement

The filing of an initial financing statement in the office specified in R.C. 1309.501 continues the effectiveness of a financing statement filed before the bill takes effect if all of the following apply:⁵⁰

- (1) The filing of an initial financing statement in that office would be effective to perfect a security interest under R.C. Chapter 1309. as amended by the bill;
- (2) The pre-effective-date financing statement was filed in an office in another state;
- (3) The initial financing statement satisfies the requirements in section 6(C) described below.

The filing of an initial financing statement as described above in the prior four paragraphs continues the effectiveness of the pre-effective-date financing statement.⁵¹

- (1) If the initial financing statement is filed before the bill takes effect, for the period provided in R.C. 1309.515 (duration and effectiveness of financing statement) as it existed before amendment by the bill with respect to an initial financing statement;
- (2) If the initial financing statement is filed after the bill takes effect, for the period provided in R.C. 1309.515 as amended by the bill with respect to an initial financing statement.

To be effective for the purposes of the preceding first through fourth paragraphs described above, an initial financing statement must do all of the following:⁵²

- (1) Satisfy the requirements of R.C. 1309.501 to 1309.529 as amended by the bill for an initial financing statement;

⁴⁹ Section 5(E).

⁵⁰ Section 6(A).

⁵¹ Section 6(B).

⁵² Section 6(C).

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

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

Pre-effective-date financing statement

After the bill takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in R.C. Chapter 1309. as amended by 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.⁵³

Except as provided in the fourth following paragraph, if Ohio law governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the bill takes effect only if any of the following occur:⁵⁴

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in R.C. 1309.501;

(2) An amendment is filed in the office specified in R.C. 1309.501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 6(C) of the bill (described in the last four paragraphs under "**Effectiveness of a filed initial financing statement,**" above);

(3) An initial financing statement that provides the information as amended and satisfies section 6(C) of the bill is filed in the office specified in R.C. 1309.501.

If Ohio law governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 5(C) and (E) of the bill (described under "**Effective date of a filed financing statement,**" above) or Section 6 of the bill (described under "**Effectiveness of a filed initial financing statement,**" above).⁵⁵

⁵³ Section 7(B).

⁵⁴ Section 7(C).

⁵⁵ Section 7(D).

Whether or not Ohio law governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in Ohio may be terminated after the bill takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement has been filed in the office specified by the law of the jurisdiction governing perfection as provided in R.C. Chapter 1309. as amended by the bill as the office in which to file a financing statement.⁵⁶

A person may file an initial financing statement or a continuation statement under Sections 3 through 8 of the bill if both the following apply:⁵⁷

(1) The secured party of record authorizes the filing.

(2) The filing is necessary under Sections 3 through 8 of the bill to do either of the following:

(a) To continue the effectiveness of a financing statement filed before the bill takes effect;

(b) To perfect or continue the perfection of a security interest.

Priority of conflicting claims to collateral

The bill determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the bill takes effect, R.C. Chapter 1309. as it existed before amendment by the bill determines priority.⁵⁸

Effective date

Except for the provisions described below in "Ohio Constitutional Modernization Commission," the bill takes effect on July 1, 2013.⁵⁹

Ohio Constitutional Modernization Commission

The Ohio Constitutional Modernization Commission consists of 32 members, 12 of whom are appointed from the General Assembly and 20 are appointed not from the General Assembly by a majority vote of the 12 members. Under the Ethics Law, the

⁵⁶ Section 7(E).

⁵⁷ Section 7(E).

⁵⁸ Section 8.

⁵⁹ Section 9.

"appropriate ethics commission" for matters relating to members of the General Assembly, employees of the General Assembly, employees of the Legislative Service Commission, and candidates for the office of member of the General Assembly is the Joint Legislative Ethics Committee. The bill provides that the Joint Legislative Ethics Committee is the "appropriate ethics commission" for matters relating to the public members appointed to the Ohio Constitutional Modernization Commission.⁶⁰

HISTORY

ACTION	DATE
Introduced	08-30-11
Reported, S. Judiciary	12-08-11
Passed Senate (33-0)	12-13-11
Reported, H. Judiciary & Ethics	--

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⁶⁰ R.C. 102.01(F)(1) and 103.63.

