

Act No. 230
Public Acts of 1988
Approved by the Governor
May 24, 1988
Filed with the Secretary of State
May 24, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Rep. Bennett

ENROLLED HOUSE BILL No. 4002

AN ACT to amend sections 9105, 9402, 9403, 9404, 9405, 9406, and 9407 of Act No. 174 of the Public Acts of 1962, entitled as amended "An act to enact the uniform commercial code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, and secured transactions, including certain sales of accounts, chattel paper and contract rights; to provide for public notice to third parties in certain circumstances; to regulate procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; to make an appropriation; to provide penalties; and to repeal certain acts and parts of acts," section 9105 as amended by Act No. 16 of the Public Acts of 1987 and sections 9402, 9403, and 9405 as amended by Act No. 53 of the Public Acts of 1980, being sections 440.9105, 440.9402, 440.9403, 440.9404, 440.9405, 440.9406, and 440.9407 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 9105, 9402, 9403, 9404, 9405, 9406, and 9407 of Act No. 174 of the Public Acts of 1962, section 9105 as amended by Act No. 16 of the Public Acts of 1987 and sections 9402, 9403, and 9405 as amended by Act No. 53 of the Public Acts of 1980, being sections 440.9105, 440.9402, 440.9403, 440.9404, 440.9405, 440.9406, and 440.9407 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 9105. (1) As used in this article unless the context otherwise requires:

- (a) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.
- (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.
- (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he or she owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in the general definitions of article 1, section 1201 and a receipt of the kind described in section 7201(2).

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures as described in section 9313, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like including, but not limited to, oil and gas before extraction. Goods also include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(i) "Instrument" means a negotiable instrument as defined in section 3104, a certificated security as defined in section 8102, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound himself or herself to make it, whether or not a subsequent event of default or other event not within his or her control has relieved or may relieve him or her from his or her obligation.

(l) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(n) "Tax identification number" means a social security number or federal employer tax identification number.

(o) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account".	Section 9106.
"Attach".	Section 9203.
"Construction mortgage".	Section 9313(1).
"Consumer goods".	Section 9109(1).
"Equipment".	Section 9109(2).
"Farm products".	Section 9109(3).
"Fixture".	Section 9313.
"Fixture filing".	Section 9313.
"General intangibles".	Section 9106.
"Inventory".	Section 9109(4).
"Lien creditor".	Section 9301(3).
"Proceeds".	Section 9306(1).
"Purchase money security interest".	Section 9107.
"United States".	Section 9103.

(3) The following definitions in other articles apply to this article:

"Check".	Section 3104.
"Contract for sale".	Section 2106.
"Holder in due course".	Section 3302.
"Note".	Section 3104.
"Sale".	Section 2106.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 9402. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, in printed or typewritten form, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, contains a statement indicating the types or describing the items of collateral. A financing statement also may, but is not required to, give the debtor's tax identification number. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement covers crops growing or to be grown, the statement shall also contain a description of the real estate concerned, and the description shall reasonably identify the real estate, as provided in section 9110. If the financing statement covers timber to be cut, covers minerals or the like, including oil and gas, or accounts subject to section 9103(5), or if the financing statement is filed as a fixture filing under section 9313 and the collateral is goods which are or are to become fixtures, the statement shall also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A legible carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in any of the following:

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. The financing statement shall state that the collateral was brought into this state or that the debtor's location was changed to this state under those circumstances.

(b) Proceeds under section 9306 if the security interest in the original collateral was perfected. The financing statement shall describe the original collateral.

(c) Collateral as to which the filing has lapsed.

(d) Collateral acquired after a change of name, identity, or corporate structure of the debtor as provided in subsection (7).

(3) A form substantially as follows is sufficient to comply with subsection (1):

(PRINT OR TYPE)

Name of debtor (or assignor)

Address

Name of secured party (or assignee).....

Social security number or federal employer tax identification number of debtor (optional).....

Address

1. This financing statement covers the following types or items of property:

(Describe).....

2. (If applicable check box below)

a. The goods are to become fixtures on

b. The above described timber is standing on

c. The above described minerals or the like (including oil and gas) are to be extracted from the wellhead or minehead of the well or mine located on

d. The above described accounts include accounts resulting from the sale of minerals or the like (including oil and gas) to be extracted from the wellhead or minehead of the well or mine located on

(Describe real estate).....

If 1 of the above boxes is checked, this financing statement is to be recorded in the real estate records. If the debtor does not have an interest of record, the name of the record owner is.....

3. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever is applicable)

Signature of debtor (or assignor).....

Signature of secured party (or assignee).....

(4) Except as provided in subsection (14), a financing statement may be amended by filing a writing signed by both the debtor and the secured party which identifies the original filing by file number and, if applicable, by liber and page. An amendment also may, but is not required to, include the debtor's tax identification number. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. As used in this article, unless the context otherwise requires, "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut, covering minerals or the like, including oil and gas, or accounts subject to section 9103(5), or a financing statement filed as a fixture filing under section 9313 if the debtor is not a transmitting utility, shall show that it covers this type of collateral, recite that it is to be recorded in the real estate records, and contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement shall show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if all of the following apply:

(a) The goods are described in the mortgage by item or type.

(b) The goods are or are to become fixtures related to the real estate described in the mortgage.

(c) The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be recorded in the real estate records.

(d) The mortgage is duly recorded. Other than the regular recording and satisfaction fees for the mortgage, a fee for the financing statement is not required.

(7) A financing statement sufficiently shows the name of the debtor if it includes the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor changes his or her name, or in the case of an organization, its name, identity, or corporate structure, so that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the debtor notifies the secured party in writing of the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective for collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

(9) Any financing statement, indicating that it is to be recorded in the real estate records, as provided in subsections (3) and (5), and any continuation statement, termination statement, amendment, or assignment relating to the statement and meeting the formal requisites of this section, section 9404, and section 9405, shall be recorded by the register of deeds of the county in which the real property described in the financing statement is located, notwithstanding the provisions for witnessing and acknowledging instruments to be recorded in the real property records contained in section 47 of chapter 65 of the Revised Statutes of 1846, being section 565.47 of the Michigan Compiled Laws.

(10) Each register of deeds shall certify on every financing statement indicating that it is to be recorded in the real estate records, as provided in subsections (3) and (5), and any continuation statement, termination statement, amendment, or assignment relating to the statement and meeting the formal requisites of this section, section 9404, and section 9405, the date and time when it was received for record, and a reference to the liber and page where it is recorded.

(11) Each register of deeds shall enter any financing statement indicating that it is to be recorded in the real estate records, as provided in subsections (3) and (5), and any continuation statement, termination statement, amendment, or assignment relating to the statement and meeting the formal requisites of this section, section 9404, and section 9405, in an entry book where a real estate mortgage would be entered, noting in the entry book the day, hour, and minute of reception, and other particulars in the order in which the financing statements, continuation statements, termination statements, amendments, and assignments are respectively received, and each instrument shall be considered recorded at the time so noted.

(12) Each register of deeds shall index each financing statement, continuation statement, termination statement, amendment, or assignment, recorded under subsection (11), in a book or card index under the name of the debtor and, if applicable, under the name of the record owner of the real estate, in the same manner as recordings of real estate mortgages are indexed.

(13) Unless otherwise determined by the secretary of state, beginning September 1, 1988 all original filings of a security agreement or a financing statement shall contain the debtor's tax identification number except for the following:

(a) A reproduction of a security agreement or of a financing statement filed under the last sentence of subsection (1) if the security agreement was entered into or the financing statement was filed before September 1, 1988.

(b) A financing statement filed under subsection (2).

(c) A financing statement which is accompanied by a certificate prescribed by the secretary of state and is signed by the debtor stating that the debtor does not have a tax identification number.

(14) If the records of the secretary of state indicate that the debtor's tax identification number contained on a financing statement received for filing is or may be incorrect, the secretary of state shall nevertheless accept and file the financing statement. The secretary of state may request the secured party or other person who submitted the financing statement to file an amendment to the statement giving the debtor's correct tax identification number. The signature of the debtor shall not be required on an amendment which changes only the debtor's tax identification number.

(15) The validity or effectiveness of a filed financing statement shall not be impaired by the failure of the statement to contain the debtor's tax identification number or by the inclusion on the statement of an incorrect tax identification number, regardless of whether the secretary of state could have refused to accept the statement for filing under subsection (13).

(16) The secretary of state shall adopt and utilize computer assisted search procedures to enable the secretary of state to provide information to a person making a request under section 9407(2). The secretary of state shall provide the information requested by a person under section 9407(2) as accurate and complete as the information the person would have received if the same request had been processed under the search procedures followed by the secretary of state immediately before the implementation of computer assisted searches.

Sec. 9403. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (7), a filed financing statement is effective for a period of 5 years after the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period, unless a continuation statement is filed within 6 months before the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before the lapse.

(3) A continuation statement may be filed or recorded by the secured party within 6 months before the expiration of the 5-year period specified in subsection (2). A continuation statement shall be signed by the secured party, identify the original statement by file number, and if the original financing statement describes real property, by the liber and page where the property is recorded, and state that the original statement is still effective. A continuation statement also may, but is not required to, include the debtor's tax identification number. A continuation statement signed by a person other than the secured party of record shall be accompanied by a separate written statement of assignment signed by the secured party of record and complying with section 9405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the financing statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed before the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the financing statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he or she has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he or she physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (7) shall be retained.

(4) Except as provided in subsection (8), a filing officer shall mark a statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy of the statement for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement, for a continuation statement, for an amendment of a financing statement, or for an assignment shall be as follows:

(a) For a filing with the secretary of state or the register of deeds, \$3.00 if the statement includes the information required under this act for the filing, and is in the standard form prescribed by the secretary of state. For a statement not complying with these requirements, the fee is \$6.00.

(b) For a filing with a register of deeds, if the financing statement, continuation statement, assignment, or amendment indicates that it is to be recorded in the real estate records, as provided in sections 9402(3) and 9402(5), \$5.00 for the first page and \$2.00 for each additional page.

(6) The uniform fee for each name more than 1 required to be indexed is \$3.00. The secured party may, at his or her option, show a trade name for a person, and an extra uniform indexing fee of \$3.00 shall be paid with respect to that name.

(7) If the debtor is a transmitting utility under section 9401(5) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 9402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(8) If a financing statement covers timber to be cut, covers minerals or the like including oil and gas, or accounts subject to section 9103(5), or is filed as a fixture filing, it shall be recorded, and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he or she were the mortgagee of the mortgage, or where indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

Sec. 9404. (1) If a financing statement covering consumer goods is filed on or after the effective date of this 1978 amendatory act, then within 1 month or within 10 days following written demand by the debtor, whichever occurs first, after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, and the secured party does not in good faith expect to make optional future advances, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he or she no longer claims a security interest under the financing statement, which shall be identified by file number, and where the original financing statement describes real property, by liber and page of recording of the financing statement. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value and the secured party does not in good faith expect to make future optional advances, the secured party shall, on written demand of the debtor, send for each filing officer with whom the financing statement was filed a termination statement to the effect that he or she no longer claims a security interest under the financing statement, which shall be identified by file number. With respect to original financing statements filed before July 1, 1976 with a filing officer other than the secretary of state, the secured party may elect to send the statement directly to the debtor instead of the filing officer. A termination statement may, but is not required to, include the debtor's tax identification number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with section 9405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within the required period, he or she shall be liable to the debtor for any loss caused to the debtor by that failure. In addition, the secured party shall be liable to the debtor for \$100.00 if he or she fails to file the termination statement within 20 days after written demand for the termination statement by the debtor.

(2) On presentation to the filing officer of a termination statement, the filing officer shall note it in the index. If the filing officer has received the termination statement in duplicate, he or she shall return 1 copy of the termination statement to the secured party stamped to show the time of receipt of the termination statement. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he or she may remove the originals from the files at any time after receipt of the termination statement, or if the filing officer has no such record, he or she may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) If the termination statement is in the standard form prescribed by the secretary of state, the uniform fee for filing and indexing a termination statement is \$1.00, and otherwise is \$1.00, plus, in each case an additional fee of \$1.00 for each additional name against which the termination statement is required to be indexed, except that a fee shall not be charged for the filing and indexing of a termination statement with respect to an original financing statement filed after June 30, 1976, unless the filing was made with the register of deeds as provided in sections 9402(3) and 9402(5), and in that event the fee shall be the same as that required to file a discharge of a real estate mortgage.

Sec. 9405. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee, or by an assignment itself or a copy of the assignment on the face or back of the statement. On presentation to the filing officer of the financing statement, the filing officer shall mark the same as provided in section 9403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement

indicating an assignment is \$3.00, if the statement is in the standard form prescribed by the secretary of state. For statements not complying with these requirements, the fee is \$6.00, plus an additional fee of \$3.00 for each name more than 1 against which the financing statement is required to be indexed.

(2) A secured party may assign of record all or a part of his or her rights under a financing statement by filing, in the place where the original financing statement was filed, a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number, and if the original financing statement describes real property, by the liber and page where the property is recorded, the date of filing of the financing statement, the name and address of the assignee and a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. An assignment also may, but is not required to, include the debtor's tax identification number. On presentation to the filing officer of a separate statement, the filing officer shall mark the separate statement with the date and hour of the filing. The filing officer shall note the assignment on the index of the financing statement, or for a fixture filing, a filing covering timber to be cut, or covering minerals or the like including oil and gas, or accounts subject to section 9103(5), he or she shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he or she shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about a separate statement of assignment is \$3.00, if the statement is in the standard form prescribed by the secretary of state. For statements not complying with these requirements, the fee is \$6.00, plus an additional fee of \$3.00 for each name more than 1 against which the statement of assignment is required to be indexed. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing under section 9402(6) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this act.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Sec. 9406. A secured party of record may by his or her signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release may, but is not required to, include the debtor's tax identification number. A statement of release signed by a person other than the secured party of record shall be accompanied by a separate written statement of assignment signed by the secured party of record and complying with section 9405(2), including payment of the required fee. Upon presentation of the statement of release to the filing officer, he or she shall mark the statement with the hour and date of filing and shall also note this information on the margin of the index of the filing of the financing statement. The uniform fee for filing and noting a statement of release is \$3.00 if the statement is in the standard form prescribed by the secretary of state and, for financing statements filed beginning September 1, 1988, includes the social security number of the debtor or the debtor's federal employer tax identification number. For financing statements not complying with these requirements, the fee is \$6.00, plus an additional fee of \$3.00 for each name more than 1 against which the statement of release is required to be indexed.

Sec. 9407. (1) If the person filing a financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to the person.

(2) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated on the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment and if there is, giving the date and hour of filing of each statement and the names and addresses of each secured party in the statement. The uniform fee for a certificate is \$3.00 if the request for the certificate is in the standard form prescribed by the secretary of state and, for certificates which concern financing statements filed beginning September 1, 1988, includes the social security number of the debtor or the debtor's federal employer tax identification number. If the request does not comply with these requirements, the fee is \$6.00. Upon request, the filing officer shall furnish a copy of a filed financing statement or statement of assignment for a uniform fee of \$1.00 per page. The secretary of state shall charge an additional fee of \$25.00 if a person requests expediting of the regular search process. The secretary of state shall promulgate rules under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to define what constitutes expediting of the regular search process.

Section 2. This amendatory act shall take effect September 1, 1988.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.