

Regular Session, 2012

ACT No. 450

HOUSE BILL NO. 369

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 10:9-102(a)(7)(B), (10), (50), and (68) through (80), 9-105, 9-307(f)(introductory paragraph) and (2), 9-311(a)(introductory paragraph) and (3), 9-317(b)

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

6 §9-102. Definitions and index of definitions

7 (a) In this Chapter:

8 * * *

9 (7) "Authenticate" means:

10 * * *

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

16 * * *

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

25 * * *

26 (50) "Jurisdiction of organization", with respect to a registered organization,
27 means the jurisdiction under whose law the organization is formed or organized.

28 * * *

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

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

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

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

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

16 ~~(69)~~(70) "Record", except as used in "for record", "of record", "record or
 17 legal title", and "record owner", means information that is inscribed on a tangible
 18 medium or which is stored in an electronic or other medium and is retrievable in
 19 perceivable form.

20 ~~(70)~~(71) "Registered organization" means an organization formed or
 21 organized solely under the law of a single State or the United States and as to which
 22 ~~the State or the United States must maintain a public record showing the organization~~
 23 ~~to have been organized. by the filing of a public organic record with, the issuance of~~
 24 a public organic record by, or the enactment of legislation by the state or the United
 25 States. The term includes a business trust that is formed or organized under the law
 26 of a single state if a statute of the state governing business trusts requires that the
 27 business trust's organic record be filed with the state. A Louisiana corporation,
 28 limited liability company, partnership in commendam (limited partnership), or
 29 registered limited liability partnership that is registered with the Louisiana secretary
 30 of state is a registered organization.

1 ~~(71)~~(72) "Secondary obligor" means a guarantor, surety, or other obligor to
 2 the extent that:

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

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

6 ~~(72)~~(73) "Secured party" means:

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

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

11 (C) a consignor;

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

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

16 (F) a person that holds a security interest arising under R.S. 10:4-210 or
 17 5-118.

18 ~~(73)~~(74) "Security agreement" means an agreement that creates or provides
 19 for a security interest.

20 ~~(74)~~(75) "Send", in connection with a record or notification, means:

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

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

26 ~~(75)~~(76) "Software" means a computer program and any supporting
 27 information provided in connection with a transaction relating to the program. The
 28 term does not include a computer program that is included in the definition of goods.

1 ~~(76)~~(77) "State" means a State of the United States, the District of Columbia,
 2 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
 3 subject to the jurisdiction of the United States.

4 ~~(77)~~(78) "Supporting obligation" means a letter-of-credit right or secondary
 5 obligation that supports the payment or performance of an account, chattel paper, a
 6 document, a general intangible, an instrument, or investment property.

7 ~~(78)~~(79) "Tangible chattel paper" means chattel paper evidenced by a record
 8 or records consisting of information that is inscribed on a tangible medium.

9 ~~(79)~~(80) "Termination statement" means an amendment of a financing
 10 statement which:

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

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

15 ~~(80)~~(81) "Transmitting utility" means a person primarily engaged in the
 16 business of:

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

18 (B) transmitting communications electrically, electromagnetically, or by
 19 light;

20 (C) transmitting goods by pipeline or sewer;

21 (D) transmitting or producing and transmitting electricity, steam, gas, or
 22 water; or

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

24 * * *

25 §9-105. Control of electronic chattel paper

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

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

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

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

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

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

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

18 * * *

19 §9-307. Location of debtor

20 * * *

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

26 * * *

27 (2) in the State that the registered organization, branch, or agency designates,
28 if the law of the United States authorizes the registered organization, branch, or

1 agency to designate its ~~State~~ state of location, including by designating its main
2 office, home office, or other comparable office; or

3 * * *

4 §9-311. Perfection of security interests in property subject to certain statutes,
5 regulations, and treaties

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

9 * * *

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

14 * * *

15 §9-316. Continued perfection of security interest following change in governing law

16 * * *

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

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

24 (2) If a security interest perfected by a financing statement that is effective
25 under Paragraph (1) of this Subsection becomes perfected under the law of the other
26 jurisdiction before the earlier of the time the financing statement would have become
27 ineffective under the law of the jurisdiction designated in R.S. 10:9-301(1) or
28 9-305(c) or the expiration of the four-month period, it remains perfected thereafter.
29 If the security interest does not become perfected under the law of the other

1 jurisdiction before the earlier time or event, it becomes unperfected and is deemed
2 never to have been perfected as against a purchaser of the collateral for value.

3 (i) Effect of change in governing law on financing statement filed against
4 original debtor. If a financing statement naming an original debtor is filed pursuant
5 to the law of the jurisdiction designated in R.S. 10:9-301(1) or 9-305(c) and the new
6 debtor is located in another jurisdiction, the following rules apply:

7 (1) The financing statement is effective to perfect a security interest in
8 collateral acquired by the new debtor before, and within four months after, the new
9 debtor becomes bound under R.S. 10:9-203(d), if the financing statement would have
10 been effective to perfect a security interest in the collateral had the collateral been
11 acquired by the original debtor.

12 (2) A security interest perfected by the financing statement and which
13 becomes perfected under the law of the other jurisdiction before the earlier of the
14 time the financing statement would have become ineffective under the law of the
15 jurisdiction designated in R.S. 10:9-301(1) or 9-305(c) or the expiration of the
16 four-month period remains perfected thereafter. A security interest that is perfected
17 by the financing statement but which does not become perfected under the law of the
18 other jurisdiction before the earlier time or event becomes unperfected and is deemed
19 never to have been perfected as against a purchaser of the collateral for value.

20 §9-317. Interests that take priority over or take free of security interest or
21 agricultural lien

22 * * *

23 (b) Buyers that receive delivery. Except as otherwise provided in Subsection
24 (e) of this Section, a buyer, other than a secured party, of tangible chattel paper,
25 tangible documents, goods, instruments, or ~~a security certificate~~ certificated security
26 takes free of a security interest or agricultural lien if the buyer gives value and
27 receives delivery of the collateral before it is perfected.

28 * * *

29 (d) Licensees and buyers of certain collateral. A licensee of a general
30 intangible or a buyer, other than a secured party, of ~~accounts, electronic chattel~~

1 ~~paper, electronic documents, general intangibles, or investment property collateral~~
 2 other than tangible chattel paper, tangible documents, goods, instruments, or a
 3 certificated security takes free of a security interest if the licensee or buyer gives
 4 value before it is perfected.

5 * * *

6 §9-326. Priority of security interests created by new debtor

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

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

23 * * *

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

27 * * *

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

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

3 * * *

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

6 * * *

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

13 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(4)(6)~~ in other cases:

2 (A) if the debtor has a name, only if it the financing statement provides the
3 ~~individual or~~ organizational name of the debtor; and

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

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

10 * * *

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

14 * * *

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

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

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

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

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

30 * * *

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

2 * * *

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

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

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

16 * * *

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

19 * * *

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

23 * * *

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

25 * * *

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

28 * * *

29 (3)

30 * * *

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

3 * * *

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

9 * * *

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

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

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

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

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

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

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

22 * * *

23 §9-518. Claim concerning inaccurate or wrongfully filed record

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

1 state is excused from sending the acknowledgment to a secured party of record or a
2 person filing the record whose address is not provided in the record.

3 * * *

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

6 PART 8. EFFECTIVENESS

7 §9-801. Definition of "Act"; effective date

8 In this Part, "Act" means the Act that originated as House Bill No. 369 of the
9 2012 Regular Session of the Legislature which enacted this Part 8 and amended other
10 provisions of law in other Parts of this Chapter. The Act takes effect on July 1, 2013.

11 §9-802. Savings clause

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

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

17 §9-803. Security interest perfected before effective date

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

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

1 §9-804. Security interest unperfected before effective date

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

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

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

9 Louisiana Official Revision Comments- 2012

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

22 §9-805. Effectiveness of action taken before effective date

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

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

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

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

2 (A) the time the financing statement would have ceased to be effective under

3 the law of that jurisdiction; or

4 (B) June 30, 2018.

5 (c) Continuation statement. The filing of a continuation statement after the

6 Act takes effect does not continue the effectiveness of a financing statement filed

7 before the Act takes effect; however, upon the timely filing of a continuation

8 statement after the Act takes effect and in accordance with the law of the jurisdiction

9 governing perfection as provided in Chapter 9 as amended by the Act, the

10 effectiveness of a financing statement filed in the same office in that jurisdiction

11 before the Act takes effect continues for the period provided by the law of that

12 jurisdiction.

13 (d) Application of Subsection (b)(2)(B) of this Section to transmitting utility

14 financing statement. Subsection (b)(2)(B) of this Section applies to a financing

15 statement that, before the Act takes effect, is filed against a transmitting utility and

16 satisfies the applicable requirements for perfection under the law of the jurisdiction

17 governing perfection as provided in Chapter 9 as it existed before amendment by the

18 Act, only to the extent that Chapter 9 as amended by the Act provides that the law

19 of a jurisdiction other than the jurisdiction in which the financing statement is filed

20 governs perfection of a security interest in collateral covered by the financing

21 statement.

22 (e) Application of Part 5. A financing statement that includes a financing

23 statement filed before the Act takes effect and a continuation statement filed after the

24 Act takes effect is effective only to the extent that it satisfies the requirements of Part

25 5 as amended by the Act for an initial financing statement. A financing statement

26 that indicates that the debtor is a decedent's estate indicates that the collateral is

27 being administered by a personal representative within the meaning of R.S.

28 10:9-503(a)(2) as amended by the Act. A financing statement that indicates that the

29 debtor is a trust or is a trustee acting with respect to property held in trust indicates

1 that the collateral is held in a trust within the meaning of R.S. 10:9-503(a)(3) as
 2 amended by the Act.

3 §9-806. When initial financing statement suffices to continue effectiveness of
 4 financing statement

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

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

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

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

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

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

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

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

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

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

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

2 §9-807. Amendment of pre-effective-date financing statement

3 (a) "Pre-effective-date financing statement". In this Section and in R.S.
4 10:9-806, "pre-effective-date financing statement" means a financing statement filed
5 before the Act takes effect.

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

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

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

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

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

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

27 (e) Method of amending: additional termination rule. Whether or not the law
28 of this state governs perfection of a security interest, the effectiveness of a
29 pre-effective-date financing statement filed in this state may be terminated after the
30 Act takes effect by filing a termination statement in the office in which the

1 pre-effective-date financing statement is filed, unless an initial financing statement
 2 that satisfies R.S. 10:9-806(c) has been filed in the office specified by the law of the
 3 jurisdiction governing perfection as provided in Chapter 9 as amended by the Act as
 4 the office in which to file a financing statement.

5 Louisiana Official Revision Comments - 2012

6 Subsection (a) is clarified in Louisiana. Although revised U.C.C. Article 9
 7 defines this term solely for use in this Section, the term actually is used in Section
 8 9-806 as well. Compare R.S. 10:9-710(b).

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

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

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

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

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

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

17 §9-809. Priority

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

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

23 Louisiana Official Revision Comments - 2012

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

33 Certain Louisiana statutes, however, create exceptions to this general rule.
 34 Examples include Subsection (e) of this Section, the Louisiana Exchange Sale of
 35 Receivables Act (R.S. 9:3137.1, et seq.), the Louisiana Electric Utility Storm
 36 Recovery Securitization Act (R.S. 45:1230), and the Louisiana Electric Utility
 37 Investment Recovery Securitization Act (R.S. 45:1255), which provide that the

1 parties' characterization of a transaction within the scope of such provisions is
2 generally conclusive.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____