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## COMMERCIAL CODE Financing Statement: Maturity Date

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## COMMERCIAL CODE

### *Financing Statement: Maturity Date*

CODE SECTIONS:	O.C.G.A. §§ 11-9-402 (amended) and 11-9-403 (amended)
BILL NUMBER:	HB 1364
ACT NUMBER:	1261
SUMMARY:	The Act places a limitation on the requirement that a financing statement or continuation statement contain either the maturity date of the secured obligation or specify that the obligation does not have a maturity date. This requirement is now limited to consumer transactions involving \$5,000 or less, and the limitation is given limited retroactive effect. The Act also creates a broad definition of "secured obligation".
EFFECTIVE DATE:	March 26, 1986

#### *History*

The version of the Uniform Commercial Code (UCC) enacted by the Georgia General Assembly in 1962 permitted but did not require that the financing statement specify a maturity date for the secured obligation.<sup>1</sup> Without a specified maturity date, the financing statement would remain effective for five years from the filing date.<sup>2</sup> If the financing statement did specify a maturity date, the secured party was required to file a continuation statement within sixty days of the maturity date or the original financing statement would lapse and the security interest would become unperfected.<sup>3</sup> The 1972 Amendment to Article 9 of the UCC, adopted by Georgia in 1978, eliminated any reference to a maturity date on the financing statement.<sup>4</sup> It was believed that any benefit of notice gained by the provision was outweighed by the risk to the unwary of an unintended

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1. 1962 Ga. Laws 156, 414. See also *Selected 1985 Georgia Legislation, Commercial Code — Financing Statement: Maturity Date*, 1 GA. ST. U.L. REV. 274 (1985) for a general discussion of the purposes of financing statements [hereinafter cited as *Selected 1985 Georgia Legislation*].

2. 1962 Ga. Laws at 416.

3. *Id.*

4. 1978 Ga. Laws 1081, 1118 (codified at O.C.G.A. §§ 11-9-402—11-9-403 (1982)).

lapse.<sup>5</sup>

In 1985, the Code was amended to require that a financing statement or a continuation statement indicate the maturity date of the secured obligation or state that the obligation was not subject to a maturity date.<sup>6</sup> It further provided that the financing statement would expire five years from filing or twenty days after the maturity date, whichever occurred earlier.<sup>7</sup> The amendment was intended to reduce paperwork and minimize the burden placed on record searchers by clearing financing statements from the records shortly after the maturity date<sup>8</sup> rather than retaining them for five years.

However, the 1985 Act was criticized for its lack of clarity and the difficulty secured parties would confront in attempting to give effective notice to ensure that their interests were adequately protected.<sup>9</sup> Compliance with the 1985 Act presented interpretive problems when applied to various lending situations, such as: 1) a single secured obligation with specified maturity date or no maturity date, 2) a single secured obligation with uncertain maturity date, 3) multiple secured obligations, 4) future advances, 5) revolving credit facilities, 6) loan consolidations, 7) amendments to financing statements, 8) pre-filing, 9) security agreement as a financing statement, 10) mortgage as a fixture filing, and 11) obligations in default.<sup>10</sup>

Besides furthering the potential for errors of interpretation in determining maturity dates, the added requirement of a maturity date increased the potential for clerical error in preparing the financing statement, which could impair the secured party's interest.<sup>11</sup> The hazards to secured parties were regarded as particularly severe in commercial lending transactions.<sup>12</sup>

Responding to the pitfalls perceived in the 1985 Act, the Uniform Commercial Code Committee of the Corporate and Banking Law Section of the State Bar of Georgia prepared a proposed amendment to O.C.G.A. §§ 11-9-402 and 11-9-403 aimed at reversing the adverse impact of the ma-

5. Carson, Conrad & Dobbs, *H.B. 712: New Requirements for Financing Statements and Continuation Statements Filed in Georgia*, GA. ST. B.J., Aug. 1985, at 6, 7.

6. 1985 Ga. Laws 1517, § 3 (codified at O.C.G.A. § 11-9-402 (Supp. 1985)). See also *Selected 1985 Georgia Legislation*, *supra* note 1, at 274-76, for a discussion of the 1985 amendments.

7. 1985 Ga. Laws 1517, § 3 (codified at O.C.G.A. § 11-9-403 (Supp. 1985)).

8. *Selected 1985 Georgia Legislation*, *supra* note 1, at 276.

9. See generally Carson, Conrad & Dobbs, *supra* note 5.

10. *Id.* at 7-13.

11. Telephone interview with J. Joseph Brannen, Executive Vice President, Georgia Bankers Ass'n (Apr. 4, 1986).

12. Memorandum to the Board of Governors, State Bar of Georgia, from Christopher L. Carson, Chairman, UCC Comm. of the Corp. and Banking Law Section, State Bar of Georgia (Dec. 9, 1985) [hereinafter cited as Memorandum]. See generally Carson, Conrad & Dobbs, *supra* note 5.

turity date requirement.<sup>13</sup> The original sponsor and others interested in the 1985 Act agreed that an amendment to the Code limiting the applicability of the maturity date requirement would serve the interests of all concerned.<sup>14</sup> The proposed amendment, with minor revisions, was presented to the General Assembly in 1986 as HB 1364.<sup>15</sup>

#### *HB 1364*

HB 1364 passed both houses of the Legislature without amendment or substitution. The 1986 Act amends O.C.G.A. §§ 11-9-402 and 11-9-403 to provide that a financing statement or continuation statement must contain the maturity date of the secured obligation or specify that the secured obligation is not subject to a maturity date only if the transaction is one in which the collateral is consumer goods *and* the original secured obligation is \$5,000 or less.<sup>16</sup> This change minimizes the adverse effect of prior law on transactions entered into after the effective date of the 1986 Act by leaving the bulk of transactions outside the ambit of the maturity date requirements. Consumer transactions remaining under the dictates of the 1985 Act would appear to be less vulnerable to the dangers perceived in its requirements because they do not generally involve the same level of complexity encountered in commercial transactions or transactions involving substantial sums. Therefore, the adverse effects of the 1985 Act are largely neutralized.

The Act broadly defines "secured obligation" for purposes of O.C.G.A. §§ 11-9-402 and 11-9-403 to "include a loan or any series of advances of money pursuant to a loan agreement or undertaking or any forbearance to enforce a claim for the collection of money or any purchase price or any installment obligation or any other obligation."<sup>17</sup> This definition covers any type of extension of credit, including aggregation of certain obligations.<sup>18</sup> In a consumer transaction, such an aggregation of obligations could push the transaction amount over the \$5,000 limit, thus exempting

13. *Id.*

14. *Id.* The Georgia Financial Services Association and the Georgia Industrial Loan Association, Inc. were among the interested parties who discussed the proposal.

15. The Committee's proposal was presented to the Board of Governors of the State Bar of Georgia, the Georgia Bankers Association and Legislative Counsel Virlyn Slaton, who approved the proposal as written. The proposal was then presented to Rep. Larry Walker, who agreed to sponsor the bill with minor revision. Interview with Christopher L. Carson, Chairman, UCC Comm. of the Corp. and Banking Law Section, State Bar of Georgia, in Atlanta (Apr. 11, 1986) [hereinafter cited as Carson Interview].

16. O.C.G.A. §§ 11-9-402—11-9-403 (Supp. 1986).

17. O.C.G.A. § 11-9-402 (Supp. 1986).

18. The definition was drawn from judicial interpretations of what constitutes a secured obligation in cases construing a usury statute, O.C.G.A. § 7-4-7 (1982 & Supp. 1985) (repealed by 1983 Ga. Laws 1146, § 8, effective March 31, 1983). Carson Interview, *supra* note 15.

the transaction from the maturity date requirement.<sup>19</sup>

The 1986 Act also provides that a financing statement or continuation statement "filed on or after July 1, 1985, which described collateral not consisting only of consumer goods . . . or for which the secured obligation . . . was greater than \$5,000, is effective for a period of five years from the date of filing notwithstanding any maturity date specified."<sup>20</sup> This section does not revive statements which lapsed before the effective date of the 1986 Act.

As to filings after the effective date of the 1985 Act but before the 1986 amendment became effective, the Act provided some relief to cover "the gap."<sup>21</sup> However, filings which show a maturity date subsequent to the Act's effective date and which would have been excluded from application of the maturity date requirement are effective for five years, notwithstanding any maturity date stated on the financing statement or continuation statement.<sup>22</sup> Thus, the 1986 Act provides some measure of retroactive effect.

The remaining requirement of a maturity date on financing statements for consumer transactions involving \$5,000 or less still frustrates the scheme of the UCC to some extent, because it ties specific collateral closely to the financing statement.<sup>23</sup> However, to a large extent, "the mischief worked by [the 1985 Act] has been repealed, retroactively to the effective date."<sup>24</sup>

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19. *Id.*

20. O.C.G.A. § 11-9-403 (Supp. 1986).

21. See Memorandum, *supra* note 12.

22. *Id.*

23. Carson Interview, *supra* note 15.

24. Letter from Christopher L. Carson (Mar. 31, 1986).