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COMMERCIAL CODE

Secured Transactions; Sales of Accounts and Chattel Paper: Refinements and Further Definitions of the Act Requiring Filing Statements and Central Indexing Among Conflicting Security Interests

CODE SECTIONS: O.C.G.A. §§ 11-9-105, -302, -313, -318, -401 to
-407 (amended), -409 (new), 11-12-101 to -102,
15-6-61, -77 (amended)

BILL NUMBER: HB 1836

ACT NUMBER: 1222

SUMMARY: The Act is principally aimed at fine-tuning the
central indexing system for article 9 filings
created by the General Assembly in 1993. It
amends article 9 of title 11, relating to secured
transactions, sales of accounts, and chattel
paper, to define further what is required on a
financing statement, amendment, continuance,
assignment, release, or termination. It also
provides for the transmission of that
information to the central indexing system and
specifies what information that system is to
maintain. The Act defines "notice filing" and
renders ineffective terms in contracts which
prohibit assignment, prohibits filing under a
trade name if that filing would be misleading to
those searching the central index, and strikes
former provisions dealing with effective dates
and the transition to the central index system.

EFFECTIVE DATE: July 1, 1994¹

History

In the 1993 session, the Georgia General Assembly attempted to ease the burden of prospective purchasers and creditors in researching previously filed financing statements under article 9 of the Uniform Commercial Code.² This was accomplished by establishing a central

1. See *infra* notes 42-49 and accompanying text.

2. *Legislative Review*, 10 GA. ST. U. L. REV. 41 (1993). In order to perfect certain security interests, creditors were required to file financing statements with the clerk of the superior court. This was mandated by article 9 of the Uniform Commercial Code as enacted in Georgia. 1993 Ga. Laws 1550. Prior to the advent of the central index, it was necessary to search the records of the county where the filing took place. This made the discovery of indebtedness on personal property covered by

indexing system to act in conjunction with the local filing records.³ The new Act is principally a collection of housekeeping modifications to last year's legislation to allow for a more effective and efficient implementation of that system.⁴

HB 1836

A Tribute to Technology

The technology of document reproduction and acquisition has changed dramatically in the past decade.⁵ The Act accommodates these changes by adding microphotographic, photographic, and optical image reproduction to the existing allowance for photostatic copies of financing statements, continuations, amendments, assignments, releases or terminations, and notice filings.⁶

Financing Statement and Amendment Contents

The Act adds the social security number or, if other than a natural person, the Internal Revenue Service taxpayer identification number of the debtor to the existing requisites of a financing statement.⁷ The added requirement for the social security number or Internal Revenue Service taxpayer identification number was the only real issue in debate on this bill.⁸ Opponents thought this new requirement might

article 9 difficult, if not impossible. *Legislative Review, supra*.

3. *Legislative Review, supra* note 2. This was accomplished in 1993 by amendments to O.C.G.A. §§ 11-9-105, -307, and -401 to -407. See 1993 Ga. Laws 576; 1993 Ga. Laws 1550.

4. Telephone Interview with Rep. Tommy Chambless, House District No. 163 (Apr. 27, 1994) [hereinafter Chambless Interview]. The main impetus for these changes came from the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA). *Id.*

5. *Id.*

6. O.C.G.A. §§ 11-9-402 to -407 (1994). The original bill was introduced without addressing these new reproduction and data collection methods. See HB 1836, as introduced, 1994 Ga. Gen. Assem. The House Judiciary Committee added them when it reported its substitute. HB 1836 (HCS), 1994 Ga. Gen. Assem. The bill was then reported on favorably by the Senate Judiciary Committee and was passed by the Senate without substitute or amendment. Compare HB 1836 (HCS), 1994 Ga. Gen. Assem. with O.C.G.A. §§ 11-9-402 to -407 (1994).

7. O.C.G.A. § 11-9-402(1) (1994). Previous requirements included: the names of the debtor and secured party; the address of the secured party from which information concerning the security interest may be obtained; the mailing address of the debtor; the signature of the debtor; a statement of the types of collateral or a description of the collateral; and, when the collateral is consumer goods for which the secured obligation is originally less than \$5000, the maturity date of the obligation or a statement that the obligation is not subject to a maturity date. *Id.*; 1993 Ga. Laws 1550, § 4.

8. Chambless Interview, *supra* note 4.

interfere with the perfection of security interests or create privacy issues, or both, but the GSCCCA required these numbers for the creation of one of the indexes for the new central system.⁹ The requirement for the social security number or Internal Revenue Service taxpayer identification number is waived if the financing statement is filed to perfect a security interest in collateral already subject to a security interest in another jurisdiction when it was brought into Georgia or when the debtor's location changed to this state, or if the debtor was not required to have either number.¹⁰

A financing statement which otherwise complies with the requirements is sufficient when signed by the secured party rather than the debtor.¹¹ In this case, the statement must be filed with a copy of the security agreement or real estate mortgage granting the security interest in the collateral described in the financing statement containing the original or authorized copy of the debtor's signature.¹²

If an amendment changes only the name or address of the secured party, or the address, the social security number or Internal Revenue Service taxpayer identification number of the debtor, or merely corrects typographical or other clerical errors in the financing statement, the signature of the debtor is not needed.¹³ The amendments must be filed with the filing officer of the county in which the financing statement to be amended is filed.¹⁴ Amendments to financing statements that do not require either a social security number or an Internal Revenue Service taxpayer identification number also do not require either of these numbers.¹⁵

Assignments, Continuations, and Releases

Prior to the Act, the law already made ineffective any term in a contract between an account debtor and an assignor if the term prohibited assignment of an account or the creation of a security interest in money due or to become due.¹⁶ The same prohibition applied if the contract required the account debtor's consent to the assignment or security interest.¹⁷ The Act renders ineffective contract terms whereby the assignor is to provide services to the account debtor.¹⁸

9. *Id.*

10. O.C.G.A. § 11-9-402(9) (1994).

11. *Id.* § 11-9-402(1) (1994).

12. *Id.*

13. *Id.* § 11-9-402(4) (1994). Previously, O.C.G.A. § 11-9-402(4) required the signature of both parties. 1993 Ga. Laws 1550, § 4.

14. O.C.G.A. § 11-9-402(4) (1994).

15. *Id.* § 11-9-402(9) (1994).

16. 1978 Ga. Laws 1081.

17. *Id.*

18. O.C.G.A. § 11-9-318(4) (1994).

The assignment, continuation, or release form must now include the social security number or Internal Revenue Service taxpayer identification number of the debtor.¹⁹ If the assignment form otherwise complies with the requirements of this Code section, it may be signed by the assignee rather than the secured party of record.²⁰ However, this is possible only if it is filed with an original or a copy of the assignment instrument which contains the signature of the secured party of record.²¹ In addition, the filing of assignments that are indicated on the original financing statement are now subject to the uniform filing fee.²²

Continuations must be filed with the filing officer where the original financing statement was filed or, if already continued, the filing officer where the current continuation is effective.²³ Likewise, assignments and releases are to be filed with the filing officer where the original financing statement was filed.²⁴

The Filing Officer and the Central Index System

The proper place to file in order to perfect a security interest remains with the clerk of the superior court,²⁵ and this office is now designated as the "filing officer."²⁶ The filing officer must mark each filing with a file number or other appropriate recording information and the date and hour of the filing.²⁷ The filing officer must hold the statement or an authorized copy thereof for public inspection.²⁸ Within twenty-four hours, the filing officer must transmit each filing to the GSCCCA, or its designated agent, for indexing in the central system.²⁹

This system will maintain all currently effective original financing statements filed on or after January 1, 1995.³⁰ The Act also includes

19. *Id.* §§ 11-9-403(3), -405(2), -406 (1994).

20. *Id.* § 11-9-405(2) (1994).

21. *Id.*

22. *Id.* § 15-6-77 (1994). Previously, these fees had been exempted. 1993 Ga. Laws 1550, § 9. The filing fees are specified in O.C.G.A. § 15-6-77(f). O.C.G.A. § 15-6-77(f) (1994).

23. *Id.* § 11-9-403(3) (1994).

24. *Id.* §§ 11-9-405(2), -406 (1994).

25. *Id.* § 11-9-401(1) (1994).

26. *Id.* This name change was made only for ease of use. Chambless Interview, *supra* note 4.

27. O.C.G.A. § 11-9-403(4) (1994).

28. *Id.* The filing officer is no longer responsible for creating the index for the central indexing system. *Id.*; see also 1993 Ga. Laws 1550, § 5. This was the intent of the previous bill and this Act clarified that intent. Chambless Interview, *supra* note 4.

29. O.C.G.A. § 11-9-403(4) (1994); see also *id.* § 15-6-61 (1994).

30. *Id.* § 11-9-407(5) (1994). The bill, as introduced, called for an effective date of July 1, 1995. HB 1836, as introduced, 1994 Ga. Gen. Assem. However, the House

in the system assignments, continuations, releases, and amendments relating to the indexed financing statements.³¹ Unless the GSCCCA has notice of an action pending relative to all lapsed and terminated financing statements and related continuations, amendments, assignments, and releases, the Act authorizes the GSCCCA to archive and store these records and therefore remove them from the active central indexing system database.³²

Notice Filings for Crops and Minerals

A notice filing is required to perfect a security interest if the collateral consists of crops growing or to be grown, minerals (including gas and oil), or accounts subject to Code section 11-9-103(5), or if the financing statement is filed as a fixture filing.³³ This method of filing is consistent with required notice filing for real estate transactions under the Uniform Commercial Code and must be filed in the real estate records of the county where the property is located.³⁴ This Act specifies that the filing must contain the following: the names of the debtor and secured party; the signature of the debtor or the secured party; the address of the secured party from whom information can be obtained; the mailing address of the debtor; the types or items of collateral; a reasonable description of the real estate; and the name of the record owner of the real estate or record lessee if the debtor does not have an interest of record in the real estate.³⁵ Amendments,

Committee on the Judiciary substituted an effective date of January 1, 1995. HB 1836 (HCS), 1994 Ga. Gen. Assem. Confusion still exists concerning the intended effective date of the Act. *See infra* notes 45-50 and accompanying text.

31. O.C.G.A. § 11-9-407(5) (1994).

32. *Id.* § 11-9-407(7) (1994). These lapsed or terminated records must be archived by (1) microfilm or other photostatic, microphotographic, photographic, or optical image reproduction record of such data and index, and (2) an electronic or computerized record of such database and index. *Id.*

33. *Id.* § 11-9-302 (1994). O.C.G.A. § 11-9-103(5) relates to perfecting security interests for a debtor with interest in minerals. *Id.* § 11-9-103(5) (1994).

34. *Id.* § 11-9-402(5) (1994); *see id.* § 11-9-403(7) (1994) (notice filing for real estate transactions under UCC). The House Judiciary Committee added the language requiring the notice filing meet the requirements of O.C.G.A. § 11-9-403(7). HB 1836 (HCS), 1994 Ga. Gen. Assem. The bill as introduced deleted the specific contents of the financial statement filing for these categories. HB 1836, as introduced, 1994 Ga. Gen. Assem. But the House Judiciary Committee opted to retain them in the Act. HB 1836 (HCS), 1994 Ga. Gen. Assem. These included the farm product name and crop year, further crop details if needed to distinguish it, the social security number or Internal Revenue Service taxpayer identification number of the debtor, a list of all of the counties in which the farm products were located and, if needed to distinguish the farm product from other farm products of the debtor, the amount of the farm product subject to the security interest. HB 1836 (HCS), 1994 Ga. Gen. Assem.

35. O.C.G.A. § 11-9-402(5) (1994); *see also id.* § 11-9-402(1) (1994). The House Judiciary Committee added these specific requirements for the filing to the bill as

releases, assignments, and terminations related to original filings must give the names of the debtors and current secured parties, their addresses, the names of the record owners or lessees, the recording information of the original notice filing, and the signatures of the current secured parties.³⁶

Filing Under a Trade Name

If a trade name or alias would be misleading to one searching the filing officer's records, it will not be sufficient for use as a debtor's name.³⁷

Burden of Error

The Act adds Code section 11-9-409. This new section deals with the accuracy of the newly required social security number or Internal Revenue taxpayer identification number of the debtor.³⁸ Any error in these numbers as a result of typographical or clerical mistake, or any other cause will not make the filing insufficient under this Act.³⁹ An exception is made when the party making the filing fails to make a good faith effort to obtain an accurate number from the debtor.⁴⁰ The secured party is entitled to rely on a written acknowledgment by the debtor or the debtor's signature on a filing which contains the incorrect number.⁴¹ The burden for proving a creditor's lack of good faith in checking the accuracy of the number is on the person challenging the sufficiency of the filing.⁴²

Transition Period

The Act changes the effective date of filings in this transition to a central index to January 1, 1995.⁴³

introduced. HB 1836 (HCS), 1994 Ga. Gen. Assem.

36. O.C.G.A. § 11-9-403(7) (1994). The notice filing is to be in the same form used to amend, release, assign, or cancel mortgages in the real estate records in Georgia but need not be attested to or acknowledged. *Id.* The GSCCCA may designate substitute forms. *Id.*

37. *Id.* § 11-9-402(7) (1994).

38. *Id.* § 11-9-409 (1994). This new Code section was added by the House Judiciary Committee. HB 1836 (HCS), 1994 Ga. Gen. Assem.

39. O.C.G.A. § 11-9-409 (1994).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* § 11-9-407(5) (1994). This change in the timing of the transition was added by the House Judiciary Committee at the request of GSCCCA. HB 1836 (HCS), 1994 Ga. Gen. Assem.; Chambliss Interview, *supra* note 4. The original implementation by the GSCCCA had been slowed by delay in appointments to the Authority as well as by the lag time required to generate funding through the collection of fees. *Id.*

Confusion Since Enactment

An error in the drafting of this Act has created confusion over its effective date.⁴⁴ Unfortunately, the attempted amendment to the transition rules erroneously states that "this article," as opposed to "this Act," is to become effective January 1, 1995.⁴⁵ A literal reading of the Act would result in the change of the effective date of the "article" for the transition of amendments, assignments, and terminations and not the new filing and central indexing provisions.⁴⁶ This could create priority issues when a party chooses to assert the effectiveness of the "file anywhere rule" in the period between July 1, 1994 and January 1, 1995, when the central filing system takes effect.⁴⁷

Since this potential confusion could result in unexpected results when interpreted by the courts, a lawsuit was filed so that the Georgia Supreme Court may clarify the situation.⁴⁸ As of October 12, 1994, the results are still uncertain.⁴⁹

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44. Telephone Interview with Rep. Tommy Chambliss, House District No. 163 (Aug. 29, 1994). The original and ongoing intent of the bill was to push all of the start dates for the central filing system from July 1, 1994 to January 1, 1995. *Id.*

45. Telephone Interview with David Williams, Georgia Bankers Association (Aug. 30, 1994). This notation is in O.C.G.A. § 11-12-101 (1994).

46. *Id.* When this problem was reported to the Office of Legislative Counsel and the State Bar of Georgia's UCC Committee, both were surprised by the error since it had been well known the legislative intent had been to amend the effective date of the entire Act to January 1, 1995. *Id.*

47. *Id.*

48. Telephone Interview with Richard P. Kessler, Jr., Chair, UCC Committee of the Georgia Bar Association (Sept. 1, 1994). The suit, filed by Trust Company Bank, named the GSCCCA and its chairman as defendants. *See Trust Co. Bk. v. Georgia Super. Ct. Clerks' Coop. Auth., Woodson Daniel, Chairman of Ga. Super. Ct. Clerks' Coop. Auth. and Clerk of Super. Ct. of Pulaski County, No. 94V-7119 (Pulaski Super. Ct. filed Aug. 18, 1994).*

49. *Id.*