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## COMMERCIAL CODE Revisions to Article 9 Filing: Require Filing Statements and Central Indexing Priority Among Conflicting Security Interests

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## COMMERCIAL CODE

### *Revisions to Article 9 Filing: Require Filing Statements and Central Indexing Priority Among Conflicting Security Interests*

<b>CODE SECTIONS:</b>	O.C.G.A. §§ 11-9-105, -307, -312, -401 to -407 (amended), 11-12-101, -102 (new), 15-6-61, -77 (amended)
<b>BILL NUMBERS:</b>	HB 244, HB 75
<b>ACT NUMBERS:</b>	563, 394
<b>SUMMARY:</b>	The first Act (which came from HB 244) requires that Uniform Commercial Code financing statements, amendment statements, continuation statements, termination statements, assignment of rights, and release of collateral be presented for filing on forms prescribed by the Georgia Superior Court Clerks' Cooperative Authority. The Act also provides for the creation of a central indexing system for these documents which will be administered by the Georgia Superior Court Clerks' Cooperative Authority. The second Act (which came from HB 75) assists farmers in getting new loans to plant crops by giving certain new security interests priority for repayment over earlier security interests, regardless of whether or not the earlier debts were due to be paid at the time the new loans were made.
<b>EFFECTIVE DATES:</b>	July 1, 1994, O.C.G.A. §§ 11-9-105, -307, -312, -401 to -407, 11-12-101, -102, 15-6-61; January 1, 1994, O.C.G.A. § 15-6-77

### *History*

Under Article 9 of the Uniform Commercial Code, which has been adopted in Georgia, certain creditors are required to file financing statements with the clerk of the superior court in order for their security interests to be valid.<sup>1</sup> Historically, the information contained in these financing statements has been difficult for prospective creditors to obtain because there exists no central database.<sup>2</sup>

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1. O.C.G.A. § 11-9-302 (1992).

2. Telephone Interview with Rep. James Floyd, House District No. 172 (June 4,

*HB 244*

HB 244 contains provisions relating to Uniform Commercial Code (UCC) filing statements by which secured creditors register their security interests. It amends several Code sections of articles 11 and 15. It also creates two new paragraphs under article 11, section 12.<sup>3</sup> The Act amends Code sections 11-9-105 and 11-9-307 by defining "commission merchant"<sup>4</sup> as a class of sellers for whom protection from liability is maintained when they represent as unencumbered livestock or farm implements which are collateral for a security interest, so long as the commission merchants have no knowledge of the existing security interest.<sup>5</sup>

The Act is notable in that it amends Code section 11-9-401 by deleting provisions which differentiate the place of filing security interests in crops, minerals, and fixtures from the place of filing other security interests<sup>6</sup> and provides that all security interests be perfected by filing them "with the clerk of the superior court of any county of the state."<sup>7</sup>

The Act requires that financing statement content requirements be uniform statewide.<sup>8</sup> This is to be achieved by the development of a standard filing form by the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA).<sup>9</sup> Furthermore, financing statements covering appurtenances to real property must adequately describe the property and include the landowner's name if the debtor is not the landowner.<sup>10</sup>

1993) [hereinafter Floyd Interview].

3. O.C.G.A. §§ 11-12-101, -102 (Supp. 1993).

4. *Id.* §§ 11-9-105, -307(4) (Supp. 1993). "As used in this Code section, the term commission merchant' means any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person." *Id.* § 11-9-307(4) (Supp. 1993).

5. *Id.* An earlier version of HB 244 would have made commission merchants and those who buy farm equipment solely for the purpose of reselling it liable irrespective of whether they knew of existing security interests. HB 244, as introduced, 1993 Ga. Gen. Assem. This language was deleted in the House Committee substitute. HB 244 (HCS), 1993 Ga. Gen. Assem.

6. O.C.G.A. § 11-9-401(1) and (2), both deleted by this Act, provided that the former be filed in the office where the mortgage on the real estate is filed or recorded and that the latter be filed in the office of the clerk of the Superior Court. O.C.G.A. § 11-9-401(1)-(2) (1992).

7. O.C.G.A. § 11-9-401(1) (Supp. 1993). The original bill named the superior court of any Georgia county as the proper place to file security interests. HB 244, as introduced, 1993 Ga. Gen. Assem.

8. O.C.G.A. § 11-9-402(3) (Supp. 1993).

9. *Id.* This section does away the sufficiency of "substantially" complying with the filing content requirements. *Id.* Such a requirement is no longer needed with the advent of a standard form. *Id.*

10. *Id.* § 11-9-402(5) (Supp. 1993). A financing statement covering crops growing, minerals, or the like (including oil and gas) or accounts subject to O.C.G.A. § 11-9-

For UCC related real estate, the holder of a secured interest must file the prescribed form with the clerk of the office of the superior court in the county in which the real estate is located.<sup>11</sup> Additional filing requirements in this Code section exist for financing statements covering farm products.<sup>12</sup>

The Act amends Code sections 11-9-403 to -406 by requiring that continuation statements, termination statements, assignments of security interests, and full or partial releases of collateral be filed using the appropriate form prescribed by the GSCCCA.<sup>13</sup> Continuation statements must identify the file number of the original statement and state that the first statement is still in effect.<sup>14</sup> Moreover, real estate mortgages may not be filed as fixture filings after July 1, 1994.<sup>15</sup> Termination statements, assignments of security interests, and full or partial releases of collateral must include the name and address of the debtor and the file number of the original statement.<sup>16</sup>

The key provisions of the Act amend Code section 11-9-407, which outlines the plan of implementing a centralized indexing system for financing statements and the related documents previously discussed.<sup>17</sup> This system has been discussed in the past but was met with strong opposition.<sup>18</sup> The impetus for centralized indexing was

103, or a financing statement indexed as a fixture filing subject to O.C.G.A. § 11-9-313, must show that it covers this type of collateral, must contain a reasonable description of the real estate, and must show the name of the record or the record lessee of the real estate if the debtor does not have an interest of record in the real estate. *Id.*

11. *Id.*

12. *Id.* § 11-9-402(5)(a)-(d) (Supp. 1992) provides that:

- (a) The farm product name and crop year subject to the security interest, except that no crop year need be designated if the security interest applies to every crop year for the duration of the filing;
- (b) The social security number, or if other than a natural person, the Internal Revenue Service taxpayer identification number of the debtor;
- (c) Each county in the state in which the farm products are located; and
- (d) If needed, to distinguish the farm products subject to such security interests from other products of the debtor not such subject to such security interest, further details of the farm products, including, where applicable, the amount of the farm products subject to the security interest.

*Id.*

13. *Id.* §§ 11-9-403 to -406 (Supp. 1993).

14. *Id.* § 11-9-403(3) (Supp. 1993).

15. *Id.*

16. *Id.* §§ 11-9-404(2), -406 (Supp. 1993). Furthermore, termination statements must be time and date stamped. *Id.* § 11-9-404(2) (Supp. 1993).

17. *Id.* § 11-9-407(3)-(6) (Supp. 1993).

18. Telephone Interview with Rep. Ray Holland, House District No. 157 (June 4, 1993) [hereinafter Holland Interview]. Some were concerned that centralized indexing

that it was virtually impossible for prospective purchasers or creditors to find out if outstanding indebtedness existed on certain personal property.<sup>19</sup> This is because the existence of UCC statements filed in a particular county could only be discovered by searching the records of that county.<sup>20</sup> Within twenty-four hours of receiving a filing statement from the clerk of the superior court of any Georgia county, the GSCCCA must include the information on the database and be able to provide the information orally in response to appropriate requests.<sup>21</sup> The twenty-four hour turnaround provision was designed to eliminate any time gap on the centralized database.<sup>22</sup>

Termination statements, assignments, and releases must be filed in the debtor's name under paragraphs -404 to -406. This is so that the identity of the lienholder will be notorious, which has not always been the case for liens filed under a "doing business as" name.<sup>23</sup> This Act also gives the GSCCCA wide latitude to promulgate rules and collect fees in support of the centralized indexing system.<sup>24</sup>

The only new articles created by HB 244 are found in Code sections 11-12-101 and -102 which contain transition provisions.<sup>25</sup> Finally, the

would simply add a new level of bureaucracy to the filing process and would be difficult for superior court clerks who were unaccustomed to using computers. *Id.* Furthermore, some opponents felt that estoppel letters were sufficient. *Id.* Estoppel letters may be sent to banks by lienholders to inform the bank of the existing obligation so that it can make checks for new loans payable to both borrower and lienholder. *Id.*

19. Floyd Interview, *supra* note 2.

20. *Id.* For example, if someone buys a tractor, which carries no title, in county A and then sells it in county B, the buyer cannot check every county in Georgia to determine if there is a lien on the tractor. *Id.* Thus, the buyer takes the tractor free of any existing liens by operation of law, because there was no way to discover the existence of the lien. *Id.* The net effect is that the original lienholder loses his interest in the tractor. *Id.* This statute gives the buyer a way to check for existing liens, which will protect the interests of the lienholder. *Id.*

21. O.C.G.A. § 11-9-407(3)-(4) (Supp. 1993). This requirement is identical to the time allowed to superior court clerks to transmit the information to the GSCCCA but does not apply to weekends or holidays. *Id.* § 15-6-61 (Supp. 1993).

22. *Id.* § 11-9-407(3)-(4) (Supp. 1993). Clerks ideally should transmit the information on the day that it is received. *Id.*

23. *Id.* §§ 11-9-404 to -406 (Supp. 1993).

24. *Id.* § 11-9-407(5) (Supp. 1993). Except that the GSCCCA cannot implement this notification system in such a way that it conflicts with the Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (1985), or the United States Department of Agriculture. *Id.* § 11-9-407(6) (Supp. 1993).

25. O.C.G.A. § 11-12-101 provides that financing statements or continuation statements filed prior to the effective date of this Act, and which would remain effective, will remain valid for five years from the date of the filing or until the twentieth day after any maturity date specified in the statement, whichever is sooner. *Id.* § 11-12-101 (Supp. 1993). Section 11-12-102 limits its sister provision in that the new financing statement must be signed by the clerk of the superior court where the original statement was filed (or any one thereof where filed originally in more than

Act amends Code section 15-6-77 effective January 1, 1994 by raising fees for filing financing and related statements.<sup>26</sup>

*HB 75*

This Act clarifies Code section 11-9-312 by providing that new perfected security interests in crops<sup>27</sup> have priority over existing perfected security interests regardless of whether or not the existing liens are due to be paid at the time the new loans are given.<sup>28</sup> This rule applies whether or not the new creditor knew of the existence of the earlier security interest.<sup>29</sup>

This Act was introduced originally in 1992 and survived the House but died in the Senate Rules Committee.<sup>30</sup> The purpose of the Act was to clarify that new loans for planting crops have priority for repayment over similar existing loans whether the existing loans were due for immediate repayment or not.<sup>31</sup>

*Bobby Slotkin*

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one county) and either the debtor or the secured party. *Id.* § 11-12-102 (Supp. 1993). The new statement must also contain the information required in O.C.G.A. § 11-9-402(1). *Id.*

26. *Id.* § 15-6-77 (Supp. 1993).

27. This refers to those security interests "given to enable the debtor to produce the crops during the production season and given not more than three months before the crops became growing crops by planting or otherwise." *Id.* § 11-9-312(2) (Supp. 1993).

28. *Id.*

29. *Id.*

30. Holland Interview, *supra* note 18. There was no opposition to the bill in 1992. *Id.* The bill was in the Senate Rules Committee at the end of the session in 1992 and the session ended before the bill could be passed. *Id.*

31. *Id.*