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(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds

(a) In identifiable noncash proceeds and in a separate deposit account containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) Subject to any right of setoff; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subdivision (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

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(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

§ 9307. Protection of Buyers of Goods.

(1) A buyer in ordinary course of business (subdivision (9) of Section 1201) takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) A buyer other than a buyer in ordinary course of business (subdivision (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, unless made pursuant to a commitment entered into without knowledge of the purchase.

§ 9308. Purchase of Chattel Paper and Instruments; Priorities.

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(a) Which is perfected under Section 9304 (permissive filing and temporary perfection) or under Section 9306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) Which is claimed merely as proceeds of inventory subject to a security interest (Section 9306) even though he knows that the specific paper or instrument is subject to the security interest.

§ 9309. Protection of Purchasers of Instruments and Documents.

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Nothing in this division limits the rights of a holder in due course of a negotiable instrument (Section 3302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7501) or a bona fide purchaser of a security (Section 8301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this division does not constitute notice of the security interest to such holders or purchasers.

§ 9310. Priority of Certain Liens Arising by Operation of Law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

§ 9311. Alienability of Debtor's Rights: Judicial Process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer but a provision in the security agreement making the transfer constitute a default is valid.

§ 9312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in other sections of this chapter and in the following sections shall govern where applicable: Section 4208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9103 on security interests related to other jurisdictions; Section 9114 on consignments.

(2) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder

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had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subdivision (5) of Section 9304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subdivision (3) and (4)), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subdivision (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subdivision (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant

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thereto. In other cases a perfected security interest has priority from the date the advance is made.

§ 9313. [Not Adopted in California or Guam.]

§ 9314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section *accessions*) over the claims of all persons to the whole except as stated in subdivision (3) and subject to Section 9315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subdivision (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subdivision (1) and (2) do not take priority over

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subdivision (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Chapter 5 remove his collateral from the whole but he must reimburse any encumbrance or owner of the whole who is not the debtor

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and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 9315. Priority When Goods are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9314.

(2) When under subdivision (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

§ 9316. Priority Subject to Subordination.

Nothing in this division prevents subordination by agreement by any person entitled to priority.

§ 9317. Secured Party not Obligated on Contract of Debtor.

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

§ 9318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

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(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9206 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

**CHAPTER 4
FILING**

~~§ 9401.~~ Place of Filing.

§ 9402. Formal Requisites of Financing Statement; Amendments;
Mortgage as Financing Statement.

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- § 9403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.
- § 9404. Termination of Statement.
- § 9405. Release of Security Interest; Duties of Filing Officer; Fees.
- § 9406. Assignment or Transfer of Security Interest; Duties of Filing Officer; Fees; Statement of Assignment.
- § 9407. Information from Filing Officer.
- § 9407.1. Recording on Microfilm.
- § 9407.2. File Numbers.
- § 9407.3. Originals Returned.
- § 9408. Financing Statement by Consignor--Terms.

§ 9401. Place of Filing.

(1) The proper place to file in order to perfect a security interest is with the Department of Revenue and Taxation.

(2) The rules stated in Section 9103 determine whether filing is necessary in this territory.

§ 9401.5. [Amended and renumbered § 10105.]

§ 9402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement:

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, 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 and contains a statement indicating the types, or describing the items, of collateral. A financing statement should include the debtor's trade name or style, if any, if known to the secured party, but a failure to include such trade name or style shall not under any circumstances affect the validity of the financing statement. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subdivision (5) of Section 9103, the statement must also comply with subdivision (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 certified copy of a financing statement or security

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agreement is sufficient as a financing statement if the original thereof was filed in this territory.

(2) A financing statement which otherwise complies with subdivision (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

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this territory or when the debtor's location is changed to this territory. Such a financing statement must state that the collateral was brought into this territory or that the debtor's location was changed to this territory under such circumstances; or

(b) Proceeds under Section 9306, if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral and give the date of filing and the file number of the prior financing statement; or

(c) Collateral as to which the filing has lapsed. Such a financing statement must include a statement to the effect that the prior financing statement has lapsed and give the date of filing and the file number of the prior financing statement; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subdivision 6). Such a financing statement must include a statement that the name, identity or corporate structure of the debtor has been changed and give the date of filing and the file number of the prior financing statement and the name of the debtor as shown in the prior financing statement.

(3) A form substantially as follows is sufficient to comply with subdivision (1);

Name of debtor (or assignor) -----

Address -----

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

Address -----

Debtor's trade name or style, if any -----

1. This financing statement covers the following types (or items) of property: (DESCRIBE) -----

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2. (If collateral is crops) The above-described crops are growing or are to be grown on: (DESCRIBE REAL ESTATE) -----

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)

*Where appropriate substitute either "The above timber is standing on . . ." or "The above mineral or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on . . ."

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party, or by the secured party alone in the case of an amendment pursuant to subdivision (6). 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. In this division, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subdivision (5) of Section 9103, must show that it covers this type of collateral, must recite that it is to be recorded in the real estate records, and the financing statement must 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 the territory. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes

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seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement or an appropriate amendment to the filed financing statement is filed before the acquisition of the collateral by the debtor. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

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

§ 9403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.

(1) Presentation for filing of a financing statement, tender of the filing fee and acceptance of the statement by the filing officer constitutes filing under this division.

(2) Except as provided in subdivision (6), a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such five-year period unless a continuation statement is filed prior to 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 five-year period, whichever occurs later. Upon such lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party of record within six months prior to the expiration of the five-year period specified in subdivision (2). Any such continuation statement must be signed by the secured party of record, identify the original statement by giving the date and the names of the parties thereto and the file number thereof and state that the original statement is continued. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in

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subdivision (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer may remove a lapsed financing statement and related filings from the files and destroy them immediately if he has retained a microfilm or other photographic record, or in other cases after one 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 physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subdivision (6) shall be retained. The filing officer shall not destroy a financing statement and related filings as to which he has received written notice that there is an action pending relative thereto or that insolvency proceedings have been commenced by or against the debtor.

(4) Except as provided in subdivision (7) a filing officer shall mark each financing statement with a consecutive file number and with the date and time of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statement according to the name of the debtor and shall note in the index the file number and the address of the debtor given in this statement. The filing officer shall mark each continuation statement with the date and time of filing and shall index the same under the file number of the original financing statement.

(5) The uniform fee for filing, indexing and furnishing filing data (subdivision 1 of Section 9407) for an original financing statement, an amendment or a continuation statement shall be three dollars (\$3) if the statement is in the standard form prescribed by the Director of Revenue and Taxation and otherwise shall be four dollars (\$4).

(6) If the debtor is a transmitting utility (subdivision (5) of Section 9401) and a filed financing statement so states, it is effective until a termination statement is filed.

(7) A financing or continuation statement covering collateral described in paragraph (b) of subdivision (1) of Section 9401 shall be recorded and indexed by the filing officer in the real property index of grantors under the name of the debtor. A financing or continuation statement so recorded and indexed and containing a description of real property affected thereby shall constitute constructive notice from the

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time of its acceptance for recording to any purchaser or encumbrancer of the real property of the security interest in such collateral.

§ 9404. Termination Statement.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party of record must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by date, names of parties thereto and file number. If the affected secured party of record fails to send such a termination statement within 10 days after proper demand therefor he shall be liable to the debtor for all actual damages suffered by the debtor by reason of such failure, and if the failure is in bad faith for a penalty of one hundred dollars (\$100).

(2) The filing officer shall mark each such termination statement with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement. If the filing officer has a microfilm or other photographic record of the financing statement and related filings, he may remove the originals from the files at any time after receipt of the termination statement and destroy them, or if he has no such record, he may remove them from his files at any time after one year after receipt of the termination statement and destroy them.

(3) The uniform fee for filing, indexing and furnishing filing data (subdivision (1) of Section 9407) for a termination statement shall be three dollars (\$3) if the statement is in the standard form prescribed by the Director of Revenue and Taxation and otherwise shall be four dollars (\$4).

§ 9405. Release of Security Interest; Duties of Filing Officer; Fees.

(1) A secured party of record may by a writing release his security interest in all or a part of the collateral covered by a filed financing statement. A statement of release is sufficient if it is signed by the secured party of record, contains a statement describing the collateral being released, the name and address of the debtor, and the file number of the original financing statement.

(2) The filing officer shall mark each such statement with the date and time of filing and index the same under the name of the debtor and under the file number of the original financing statement.

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(3) The uniform fee for filing, indexing and furnishing filing data (subdivision (1) of Section 9407) for a statement of release shall be three dollars (\$3) if the statement is in the standard form prescribed by the Director of Revenue and Taxation and otherwise shall be four dollars (\$4).

§ 9406. Assignment or Transfer of Security Interest; Duties of Filing Officer; Fees; Statement of Assignment.

(1) If a secured party assigns or transfers his security interest in any collateral as to which a financing statement has been filed, a statement of such assignment may be filed. Such statement shall be signed by the secured party, describe the collateral as to which the security interest has been assigned, give the name and mailing address of the assignee or transferee, the name and address of the debtor and the file number of the original financing statement.

(2) The filing officer shall mark each such statement of assignment or transfer with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement.

(3) A statement of assignment may be filed at the time of the filing of the financing statement, in which event the filing officer shall first file the financing statement and index the assignment under the name of the debtor and under the file number given the financing statement. An assignment endorsed on the financing statement before it is filed with the filing officer need not be indexed by him.

(4) The uniform fee for filing, indexing and furnishing filing data (subdivision (1) of Section 9407) for a separate statement of assignment shall be three dollars (\$3) if the statement is in the standard form prescribed by the Director of Revenue and Taxation and otherwise shall be four dollars (\$4).

(5) Whenever a continuation statement, an amendment to a financing statement, a termination statement, a statement of release or a statement of assignment signed by one other than the secured party of record is presented for filing it must be accompanied by a statement of assignment signed by the secured party of record covering the collateral to which such continuation statement, amendment, termination statement, release, or assignment applies.

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(6) Wherever in this code reference is made to the secured party of record it means the secured party named in the original financing statement or, if a statement of assignment has been filed, or an assignee has been named in the financing statement before it is filed, the assignee or transferee of the security interest in the collateral affected. Any continuation statement amendment to a financing statement, termination statement, statement of release or statement of assignment signed by one other than the secured party of record as to the collateral affected thereby shall be ineffective for any purpose except as between the parties thereto.

§ 9407. Information from Filing Officer.

(1) If the person filing any financing statement, amendment, termination statement, statement of assignment, continuation statement, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy of a financing statement the file number and upon the copy of any of such statements the date and time of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and time stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and time of filing of each such statement and the names and addresses of each secured party therein. The certificate shall not include any statement as to the possibility of insolvency proceedings which might have the effect of preventing the lapse of effectiveness of a filed financing statement pursuant to Section 9403 whether actual insolvency proceedings are known or unknown to the filing officer. The uniform fee for such a certificate shall be five dollars (\$5). Upon request the filing officer shall furnish a copy of any filed financing statement or related filings for a uniform fee of one dollar (\$1) for the first page and fifty cents (\$0.50) for each page thereafter.

(3) Fees to be charged by the Director of Revenue and Taxation for daily or less frequent summaries or compilations of filings, which he may furnish, shall be sufficient to pay at least the actual cost of such service. Fees shall be determined by the Director of Revenue and Taxation. Such summaries or compilations may be in the form of microfilm copies or such other form as may be provided for the required information.

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§ 9407.1. Recording on Microfilm.

In lieu of filing all financing statements, termination statements, partial releases, assignments, or other related papers falling under this code, the filing officer may record such papers. He may employ a system of microphotography. All film used in the microphotography process shall comply with minimum standards of quality approved by the United States Bureau of Standards and the American National Standards Institute. A true copy of the microfilm shall be kept in a safe and separate place for security purposes.

§ 9407.2. Consecutive File Numbers.

Should the filing officer choose to record rather than file all financing statements and related papers, he shall mark each financing statement with a consecutive file number. All other related papers affecting such financing statement shall thereafter bear the same file number. He shall index the same under the name of the debtor (or assignor or seller) in a separate index or in his general index, and under the file number of the original statement.

§ 9407.3. Originals Returned.

Upon recording the financing statement or other related papers, the originals or copy of the same shall be returned to the parties entitled thereto.

§ 9408. Financing Statement by Consignor--Terms.

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in Section 9402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

**CHAPTER 5
DEFAULT**

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- § 9501. Default; Procedure When Security Agreement Covers both Real and Personal Property.
- § 9502. Collection Rights of Secured Party.
- § 9503. Secured Party's Right to Take Possession After Default.
- § 9504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.
- § 9505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.
- § 9506. Debtor's Right to Redeem Collateral.
- § 9507. Secured Party's Liability for Failure to Comply with This Chapter.
- § 9508. Remuneration by Debtor--Basis of Validity.

§ 9501. Default; Procedure When Security Agreement Covers both Real and Personal Property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter and except as limited by subdivision (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9207. The rights and remedies referred to in this subdivision are cumulative.

(2) After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement and those provided in Section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subdivisions referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subdivision (3) of Section 9504 and Section 9505) and with respect to redemption of collateral (Section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) Subdivision (2) of Section 9502 and subdivision (2) of Section 9504 insofar as they require accounting for surplus proceeds of collateral;

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(b) Subdivision (3) of Section 9504 and subdivision (1) of Section 9505 which deal with disposition of collateral;

(c) Subdivision (2) of Section 9505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9506 which deals with redemption of collateral; and

(e) Subdivision (1) of Section 9507 which deals with the secured party's liability for failure to comply with this chapter.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this chapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this chapter do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

§ 9502. Collection Rights of Secured Party.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

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COURT DECISIONS: Section 9504 does not apply to deficiency judgments; rather Guam Rules of Civil Procedure 70(a) sets the applicable standard and to use the standard of "commercially reasonable" is to commit reversible error. Town House Dept. Stoe, Inc. v. Ahn, 2000 Guam 29 (Guam Supreme Court, 1/06/2000).

§ 9503. Secured Party's Right to Take Possession After Default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9504.

§ 9504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed,

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the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchase acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a trans-

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fer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

COMMENT: Section 9504 conforms substantively to Section 9-504 of the 1972 Official Text of the Uniform Commercial Code. For purpose and effect, see Official Comment. The California version is the same except that subdivision (3) provides certain rules relating to notice of sale. The California variations were rejected by the Permanent Editorial Board on the grounds that they destroy the desirable flexibility provided in the Official Text. For further discussion, see Report of the Permanent Editorial Board for the Uniform Commercial Code quoted in West Ann. Cal. Comm. Code § 9504, California Code Comment (Supp. 1975).

COURT DECISIONS: SUPERIOR COURT 1980. Subsection (3) of this § 9504 contains notice requirements which differ for public and private sale. Sale in this case was private, and notice under private sale requires only "reasonable notification of the time after which a sale or other disposition would be made" and such notification was made. Further, assignee is not required to provide notice because assignee of a secured party "acquires the rights and duties of the secured party". *Jones & Guerrero Co., Inc., d/b/a/ Datsun Motors Sale v. Fausto, et al*, Civil Case No. 185-80.

§ 9505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.

(1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights, under this chapter a secured party who has taken possession of collateral must dispose of it under Section 9504 and if he fails to do so within 90 days after he takes possession or within a reasonable time after such 90-day period, the debtor at his option may recover in conversion or under Section 9507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subdivision. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a

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person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under Section 9504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

§ 9506. Debtor's Right to Redeem Collateral.

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9504 or before the obligation has been discharged under Section 9505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

§ 9507. Secured Party's Liability for Failure to Comply with This Chapter.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this chapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences

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with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

COMMENT: Section 9507 conforms substantively to Section 9-507 of the 1972 Official Text of the Uniform Commercial Code. For purpose and effect, see Official Comment. The California version differs only insofar as it omits the last sentence of subdivision (1). This omission is based only on the fact that comparable provisions are contained in statutes dealing with consumer sales preserved by Section 9203(4) of the California Commercial Code.

§ 9508. Renunciation by Debtor--Basis of Validity.

No renunciation or modification by the debtor of any of his rights under this chapter as to consumer goods shall be valid or enforceable unless the renunciation or modification is in consideration of a waiver by the secured party of any right to a deficiency on the debt.



MINA' BENTU OCHO NA LIHESLATURAN GUÅHAN
TWENTY-EIGHTH GUAM LEGISLATURE

Senator Edward J.B. Calvo
SECRETARY OF THE LEGISLATURE

Chairman
COMMITTEE ON FINANCE, TAXATION & COMMERCE

OFFICE OF FINANCE AND BUDGET

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Committee Report on

Bill No. 338 (EC): An Act To Repeal The Implementation Date Of Revised Article 9 Of Title 13 Guam Code Annotated And To Create A Taskforce To Recommend Revisions To Title 13 Of The Guam Code Annotated Known As The Uniformed Commercial Code, *as amended by the Committee on Finance, Taxation, and Commerce.*

I Mina' Bente Ocho Na Liheslaturan Guåhan
Committee on Finance, Taxation, and Commerce
Sinadot Edward J.B. Calvo, Ge'hilo

I. OVERVIEW

The Committee on Finance, Taxation, and Commerce held a Public Hearing on Wednesday, September 20, 2006 at 9:30 a.m. at *I Liheslaturan Guåhan*'s Public Hearing Room on Bill No. 338 (EC), "*An Act to Repeal the Implementation Date of Revised Article 9 of Title 13 Guam Code Annotated and To Create a Task Force to Recommend Revisions to Title 13 of the Guam Code Annotated Known as the Uniformed Commercial Code.*" Notices of the public hearing were disseminated throughout all local media via facsimile and are attached herein.

a. Senators present:

Senator Edward J.B. Calvo, Chairman
Senator Antonio R. Unpingco, Member
Senator Adolpho B. Palacios, Member
Senator Robert Klitzkie

b. Appearing before the Committee:

Ms. Meredith Sayre, Legal Counsel, Guam Bankers Association
Mr. Edward Untalan, President, Guam Bankers Association
Mr. Richard Johnson, Legal Counsel, First Hawaiian Bank
Mr. John Carlos, Department of Revenue and Taxation
Mr. Larry K. Butterfield, President, Citizens Security Bank

II. SUMMARY OF VERBAL TESTIMONIES:

Chairman Edward J.B. Calvo provided introductory remarks and asked Senator Unpingco if he would like to make an opening statement as the author of Bill No. 338 (EC).

Senator Unpingco asked those who were present and wished to testify to please come forward. He gave a brief history of the need for Bill No. 338 (EC), citing Public Law 26-172 which repealed and reenacted Division 9 to adopt the 2001 Revision of the Article 9 of the Uniform Commercial Code, but did not provide an effective date. This was followed by Public Law 27-40, which amended Public Law 26-172 to add Section 5 which made the effective date October 1, 2004.

Public Law 27-106 extended the effective date until October 1, 2005. At the request of the Guam Bankers Association, Public Law 28-067 further extended the effective date until October 1, 2006. Division 9 provided as an attachment to Bill No. 338 (EC) is pre-Public Law 26-172 and is the current version of the law.

Ms. Meredith Sayre described the efforts made, thus far, to update Article 9 and commented that the Guam Bankers Association found many instances where references were made to other parts of the Uniform Commercial Code. The group concluded that it was necessary to update the entire Uniform Commercial Code, and as such were in full support of Bill No. 338 (EC).

Mr. Edward Untalan thanked Senator Unpingco for working with the Guam Bankers Association over the past year and a half and reiterated the association's serious recommendation to review and update the entire Uniform Commercial Code. He asked the committee to recommend passage and implementation of the proposed legislation prior to October 1, 2006.

Mr. Richard Johnson also spoke to the complexities of amending Article 9 without amending other portions of the Uniform Commercial Code. He cited the need to have an updated code so that commercial transactions will continue with the least possible disruption to consumers. He concluded by asking the committee to consider a few technical amendments to the bill.

Mr. John Carlos paraphrased written testimony submitted on behalf of his department in support of the bill. He called the committee's attention to the savings provision contained in the bill which would remove any doubt as to the validity and effectiveness of the financing statements that are to be filed with the Department of Revenue and Taxation. He stated that his department hopes the task force is able to meet the challenge of drafting a law that would benefit both the banking industry and its consumers.

Mr. Larry Butterfield agreed that the task of drafting an updated Uniform Commercial Code should include any consumer group or person interested in providing input to the process.

Senator Unpingco asked the witnesses if the composition of the task force was acceptable. Mr. Johnson recommended that someone, such as the Compiler of Laws, should be put in charge of ensuring that such a task force fulfills its mandates. Mr. Untalan added that the Guam Bar Association may be an interested party. Senator Unpingco asked if there would be any transaction affected by the proposed bill or its predecessors. Mr. Johnson informed the committee that the revised Article 9 was only in effect for a few days and it probably had no real impact on any transactions. Ms. Sayre suggested it was the association's intention to have the original Article 9 in

effect again until such time a fully revised Uniform Commercial Code could be enacted. It was agreed by those present that this would be the case. Senator Unpingco asked Mr. Carlos if his department would participate in the activities of the task force. Mr. Carlos noted that his department has yet to hire an in-house counsel, but would most likely provide banking and related technical expertise to the efforts.

Senator Klitzkie reflected upon his first involvement with the Uniform Commercial Code as Assistant Legal Counsel in 1976. He asked the witnesses if a mechanism of some type could be put in place so updates to the Uniform Commercial Code, or any other code, would take place periodically or as needed. Mr. Johnson informed the members of the committee that the National Conference of Commissioners on Uniform State Laws had been approached on the subject and had indicated some interest in such an endeavor. Ms. Sayre also proposed that a law revision commission, or a similar entity, would be an appropriate body.

Senator Palacios said that he listens to the experts when dealing with subjects of which he is not an expert. He agreed that the experts present today understand the importance of the proposed legislation; moreover, he supports the bill's passage as this would prevent unnecessary confusion in the application of the Uniform Commercial Code.

Senator Unpingco informed the witnesses that the bill may be on the session agenda before October 1st and asked if they could make themselves available for questions from the full body during the Committee of the Whole. He thanked them for their assistance in the preparation of Bill No. 338 (EC) and asked for their continued support in this endeavor.

Chairman Calvo informed the witnesses that the bill's intentions would fall directly into his committee's oversight and he would be recommending that his committee participate in the task force. There being no other testimony, Chairman Calvo concluded the Public Hearing at 10:10 a.m.

III. COMMITTEE RECOMMENDATIONS:

The Committee on Finance, Taxation, and Commerce, to which Bill No. 338 (EC), "*An Act to Repeal the Implementation Date of Revised Article 9 of Title 13 Guam Code Annotated and To Create a Task Force to Recommend Revisions to Title 13 of the Guam Code Annotated Known as the Uniformed Commercial Code*", was referred, does hereby submit its recommendations to *I Mina 'Bente Ocho na Liheslaturan Guåhan* **TO PASS** Bill No. 338 (EC), as amended.



MINA BENTUCHO NA LIHESLATURAN GUAMAN
TWENTY-EIGHTH GUAM LEGISLATURE

Senator Edward J.B. Calvo
SECRETARY OF THE LEGISLATURE

Chairman
COMMITTEE ON FINANCE, TAXATION & COMMERCE

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September 20, 2006
9:30 a.m.

Public Hearing Agenda:

1. **Bill 338 (EC):** *"An Act To Repeal The Implementation Date Of Revised Article 9 Of Title 13 Guam Code Annotated And To Create A Taskforce To Recommend Revisions To Title 13 Of The Guam Code Annotated Known As The Uniformed Commercial Code."*

Individuals wishing to provide verbal/written testimony, please sign your name on the roster sheet available at the legislative staff table.

September 19, 2006

Honorable Edward J.B. Calvo
Chairman
Committee on Finance, Taxation and Commerce
28th Guam Legislature
Hagatna, Guam 96910

Re: Bill No. 338

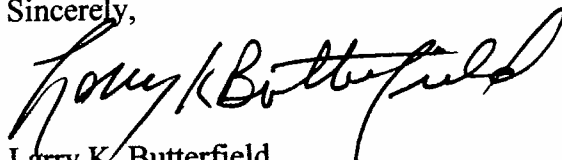
Dear Mr. Chairman:

Citizens Security Bank appreciates this opportunity to submit comments on Bill No. 338 which is intended to repeal the implementation date of Revised Article 9 of Title 13 Guam Code Annotated and to create a task force to recommend revisions to Title 13 of the Guam Code Annotated known as the Uniform Commercial Code.

Guam's version of the Uniform Commercial Code was enacted in 1978, and since that time no article of the Code has been updated. Since 1978 the National Conference of Commissioners on Uniform State Laws, the organization which drafted the Uniform Commercial Code, has continued to update each article of the Code to resolve issues that have arisen and to reflect more modern commercial practices. Guam's Code has not been updated and, for example, does not include articles critical to modern day commerce including electronic funds transfers, leases, negotiable instruments, and investment securities. We believe it important that Guam's Code be updated and we fully support Bill No. 338.

Thank you for your consideration.

Sincerely,



Larry K. Butterfield
President and CEO
Citizens Security Bank

Senator Edward J.B. Calvo
ACKNOWLEDGEMENT RECEIPT
Rcv'd by: Domiced O. Olanaran
Print Name & Initial

Time: 9:10 AM
Date: 9/19/06

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Dipåttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

FELIX P. CAMACHO, Governor *Maga'låhi*
KALEO S. MOYLAN, Lt. Governor *Tiñente Gubetnadot*

ARTEMIO B. ILAGAN, Director
Direktot
JOHN P. CAMACHO, Deputy Director
Segundo Direktot

September 19, 2006

The Honorable Edward J. B. Calvo
Chairman, Committee on Finance, Taxation & Commerce
Twenty-Eighth Guam Legislature
155 Hesler Street, Hagatna, Guam 96910

Re: Bill No. 338 (EC): "An Act to Repeal the Implementation Date of Revised Article 9 of Title 13 Guam Code Annotated and To Create a Task Force to Recommend Revisions to Title 13 of the Guam Code Annotated Known as the Uniformed Commercial Code"

Dear Senator Calvo:

I am in favor of Bill No. 338 because of the savings provision of this bill. The savings provision contained in this bill will remove any doubt to the validity and effectiveness of the financing statements that are filed with this Department without regards to the amendments made to the Uniform Commercial Code, Division 9.

It is our hope that the taskforce shall be able to meet the challenge of drafting a law that is beneficial not only to the banking industry but also to the consumers of Guam.

I reiterate that I am in favor of Bill No. 338 because of the savings provision of this bill.

Sincerely,

JOHN P. CAMACHO
Acting Director

GUAM BANKER'S ASSOCIATION

September 20, 2006

Senator Edward J. B. Calvo

Chairman, Committee on Finance, Taxation & Commerce
MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
155 Hesler Street
Hagatna, Guam 96910

Re: Bill 338 (EC): "An Act To Repeal The Implementation Date Of Revised Article 9 Of Title 13 Guam Code Annotated And To Create A Taskforce To Recommend Revisions To Title 13 Of The Guam Code Annotated Known As The Uniform Commercial Code."

Dear Senator Calvo:

The Guam Banker's Association ("GBA") submits this written testimony regarding Bill No. 338 (EC), an act introduced by Senator Antonio R. Unpingco, to repeal the implementation date of Revised Article 9 of the Uniform Commercial Code (UCC) and to establish a taskforce to review and recommend changes to the Title 13, the entire uniform code.

Bill No. 338 (EC) recognizes the need to update Guam's Uniform Commercial Code in its entirety. The Guam Legislature, through the enactment of Public Law 26-172, updated Article 9 only of the Uniform Commercial Code. As Article 9 addresses Secured Transactions, the GBA undertook the project of drafting proposed amendments to Public Law 26-172 to address both technical and practical problems with the law as passed. While the GBA supported the intention and motivation of the passage of Public Law 26-172 and the need to update Guam's version of this uniform law, it became apparent to the GBA that revised Article 9, and any of the other Articles of the Uniform Commercial Code, can not be treated as stand alone Articles of the whole Uniform Commercial Code.

The Uniform Commercial Code is a comprehensive and integrated code. It is comprised of separate Articles dealing with different subjects such as Sale of Goods, Commercial Paper, Bulk Transfers, Warehouse Receipts, Bank Deposits and Collections, Investment Securities and Secured Transactions. Each of the Articles cross references provisions in other Articles of the Code. The GBA attempted to draft an amended revised Article 9; however, it became a very complex project as each of the Articles is interrelated with various other sections of the Code. The GBA concluded that the Code could not be revised on a piecemeal basis and that the sole logical solution to the problem is the repeal of Public Law 26-172 in its entirety and then embark on the updating of the entire Uniform Commercial Code. This is the solution that Bill No. 338 (EC) represents. This will be beneficial to not only the banking community but the entire business community and the general public.

Guam's current version of the Uniform Commercial Code, while it has served us well, has never been updated. Since the time it was passed, the National Conference of Commissioners on Uniform State Laws has continued to update each article of the Code to resolve issues that have

arisen, and to reflect more modern commercial practices. While most other jurisdictions of the United States have updated their Uniform Commercial Code, Guam has not. For example, the Uniform Commercial Code of Guam does not include an Article 2.A on Personal Property Leasing Transactions or an Article 4.A on Electronic Funds Transfers.

Should the implementation date of October 1, 2006, of revised Article 9 become effective, there will be a great deal of uncertainty and a chilling effect on all commerce regarding secured transactions. The GBA believes now is the opportune time to commence the project of updating Guam's Uniform Commercial Code. Bill No. 338(EC) is an important piece of legislation and we support its passage. We also encourage the immediate passage and enactment before October 1, 2006.

Put Respetu,



Ed Untalan
President/Guam Banker's Association

TESTIMONY OF FIRST HAWAIIAN BANK REGARDING BILL 338 (EC)

Mr. Chairman and Members of the Committee,

On behalf of First Hawaiian Bank, we are pleased to speak in strong support of the passage of Bill Number 338 (EC). Both as a member of the Guam Bankers Association and in our own right, we have been closely following the situation with respect to revised Article 9 of the Uniform Commercial Code since the enactment of Public Law 26-172. We are in favor of updating Article 9, as well as all other divisions of Guam's Uniform Commercial Code. However, as the legislative findings and intent of Bill Number 338 (EC) indicate, this must be done carefully and deliberately to ensure that Guam's laws governing areas such as secured transactions, sales, commercial paper, bulk sales, letters of credit and other important topics are preserved in a coherent and orderly state.

Guam's version of the Uniform Commercial Code was adopted in 1976. Since that time, despite the fact that the Uniform Commercial Code has been updated by the National Commissioners on Uniform Laws numerous times and despite the fact that most states have updated their versions of the Code regularly, Guam has not.

Public Law 26-172 was an attempt to update one division¹ of Guam's Uniform Commercial Code, that being the division on secured transactions. The author of the Bill intended to update the laws on secured transactions so that Guam's law was consistent with that of the 50 states of the

¹ Guam's Uniform Commercial Code is divided into nine "divisions." Other states' codes are divided into "articles." The terms are used interchangeably in this testimony for simplicity.

United States. No one can criticize this intention. However, what appears not to have been foreseen or brought to the Legislature's attention was the impact the revisions contained in revised Article 9 would have on the other divisions of the Code, and vice versa. Revised Article 9 contains a great number of cross-references to other divisions of the Uniform Commercial Code. The interplay between revised Article 9 and the other articles or division of the Uniform Commercial Code, and also between articles other than Article 9, is extraordinarily complex. Trying to effectively deal with these complexities on an article-by-article basis would be a monumental, if not impossible, task, and the result would be that Guam's Uniform Commercial Code would not be at all uniform during that process. This would lead, we believe, to any number of unintended consequences in various areas where uniformity, stability and predictability are the main areas of concern. The results could be disastrous.

To try to solve this situation and to fit revised Article 9 into the current Guam Uniform Commercial Code, the Guam Bankers Association made an attempt to draft an amended revised Article 9 to include definitions and to make sense out of cross-references. However, that project quickly became so complex, and its potential adverse consequence so serious that the Association determined that the only logical alternative was to update the entire Code. In other words, taking the entire current Uniform Commercial Code and fitting it within the context of Guam law would be easier, more expeditious, less expensive and,

most important, less fraught with potential adverse and unintended consequence than accomplishing this feat on a piece meal basis.

It is important that revised Article 9 in isolation not become the law of Guam. This would have a dramatic and deleterious affect on commercial transactions within Guam. These transactions may seem complex and foreign to some, but they form the backbone of day-to-day transactions of all businesses. Businesses need a legal infrastructure in which to operate. When that infrastructure is to be modified in any way, it must be done carefully and deliberately and in way so as to cause the least possible disruption and the least possible affect on various persons' interests.

Both consumers and businesses alike deserve stability in their dealings with one another. The repeal of Public Law 26-172 will go a long way towards restoring that in Guam. So will the development and eventual passage of a revised and updated Uniform Commercial Code. For those reasons, and with a few technical amendments which are pointed out in an attachment to this testimony, we strongly support passage of this bill.

**ATTACHMENT
CHANGES REQUIRED TO BILL 338 (EC)**

Section 4. The reference to Public Law 26-106 should be to Public Law 27-106.

Section 6. Line 11 after the word "laws" insert "in effect."

Section 6. Lines 11 through the end. This material should be deleted as it could be interpreted to interfere with vested property rights of persons who could be affected thereby.



MINA' BENTE UCHO NA LIHESLATURAN
TWENTY-EIGHTH GUAM LEGISLATURE

Senator Edward J.B. Calvo
SECRETARY OF THE LEGISLATURE

Chairman
COMMITTEE ON FINANCE, TAXATION & COMMERCE

OFFICE OF FINANCE AND BUDGET

E-Mail address: sencalvo@yahoo.com
155 Hesler Street Hagåtña, Guam 96910
Website: senatoreddiebazacalvo.com

Telephone: (671) 475-8801/2
Facsimile: (671) 475-8805

September 13, 2006

Public Hearing Notice

*5 GCA §8108 (Special Meeting)
Five Working Day Notice Requirement*

The Committee on Finance, Taxation, and Commerce has scheduled a public hearing on Wednesday, September 20, 2006, 9:30 a.m. at *I Liheslaturan Guåhan's* Public Hearing Room. The *Committee* solicits any written and verbal testimonies from the Public on the following measure:

- **Bill 338 (EC):** "An Act To Repeal The Implementation Date Of Revised Article 9 Of Title 13 Guam Code Annotated And To Create A Taskforce To Recommend Revisions To Title 13 Of The Guam Code Annotated Known As The Uniformed Commercial Code."

The Committee encourages the public to submit verbal or written testimony at the hearing. Individuals wanting to submit written testimony but are unable to attend the hearing may mail or drop copies to the Office of Senator Edward J.B. Calvo, 155 Hesler Street Hagåtña, Guam, 96910; by facsimile to 475-8805; or by email to sencalvo@yahoo.com. Individuals wanting to attend the hearing requiring special accommodations, auxiliary aids or services should contact Bernice C. Manibusan at 475-8801/2 or send an e-mail to sencalvo@yahoo.com.

The public is welcome to visit and view the website of Senator Edward J.B. Calvo at senatoreddiebazacalvo.com. Please feel free to leave any general comments for the Senator on issues involving yourself or our island.

cc: All Senators
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Executive Director

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9/13/06



MINA BENTU OCHO NA LIHESLATURAN GUÅHAN
TWENTY-EIGHTH GUAM LEGISLATURE

Senator Edward J.B. Calvo
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September 18, 2006

Public Hearing Notice

*5 GCA §8108 (Special Meeting)
48 Hour Notice*

The Committee on Finance, Taxation, and Commerce has scheduled a public hearing on Wednesday, September 20, 2006, 9:30 a.m., at *I Liheslaturan Guåhan's* Public Hearing Room. The *Committee* solicits any written and verbal testimonies from the Public on the following measure:

- **Bill 338 (EC):** *"An Act To Repeal The Implementation Date Of Revised Article 9 Of Title 13 Guam Code Annotated And To Create A Taskforce To Recommend Revisions To Title 13 Of The Guam Code Annotated Known As The Uniformed Commercial Code."*

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LOCAL

GOVERNMENT MEETINGS

Sept. 14

▲ **A.B. Won Pat Guam International Airport Authority** board of directors special meeting: 3 p.m. Sept. 14, Terminal Conference Room 3, Tamuning. Agenda copies available during meeting; parking available in public parking lot. Call 646-0300.

▲ **Civil Service Commission** board meeting: 5:30 p.m. Sept. 14, second-floor conference room, Hakubotan Building, Tamuning. Motion hearings: J. Tainatongo vs. Guam Public School System, J.E. Nuevo vs. GPSS; bills and laws relating to CSC. Call Bianca, 647-1855/57 or TDD 647-1872.

▲ **Guam Board of Nurse Examiners** meeting: 4 p.m. Sept. 14, Professional Licensing Office, Suite 9, Legacy Square Commercial Complex, Route 10, Mangilao. Call 735-7408/11.

▲ **Guam Visitors Bureau** board of directors regular meeting: 1:30 p.m. Sept. 14, GVB conference room, Tumon. Call 646-5278.

▲ **Port Authority of Guam** board of directors regular meeting: 2 p.m. Sept. 14, board conference room, Cabras Island, Piti. Call Simeon Delos Santos, 477-5931/4, ext. 430, or pager 635-1351.

Sept. 15

▲ **Commission on Post-Mortem Exams** meeting: 9 a.m. Sept. 15, attorney general's of-

tem dispatcher technician positions. Agenda copies available upon request. Call 648-3002.

Sept. 20

▲ **Committee on Finance, Taxation and Commerce** public hearing: 9:30 a.m. Sept. 20, Legislature's public hearing room, Hagåtña. Bill 338, to create a task force to recommend revisions of the Uniformed Commercial Code. Written or verbal testimony should be submitted to the office of Sen. Edward Calvo, fax to 475-8805; or e-mail: sencalvo@yahoo.com.

▲ **Guam Board of Examiners for Dentistry** regular meet-

ing: 3 p.m. Sept. 20, Health Professional Licensing Office, Suite 9, Legacy Square Commercial Complex, Route 10, Mangilao. For special accommodations, call 375-7406/08.

▲ **Guam Board of Medical Examiners** regular meeting: Noon Sept. 20, Guam Memorial Hospital Authority board room, Tamuning. Agenda copies are available. Call 735-7406/11.

▲ **Mayors Council of Guam** special meeting: 10 a.m. Sept. 20, each third Wednesday, council conference room, Suite 111F, J&G Commercial Center, Hagåtña. Call 472-6940 or 477-8461.

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University of Gua Board of Regents Me

The Regular Meeting of the University of Gua will be held on Thursday, September 21, 2006 Room #1 of the RFK Memorial Library. The U complies with Guam Public Law 24-109 with sions and requirements of the Americans with assistance contact the UOG EEO Office at 73: 735-2243.

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MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 338(EC)

Introduced by:

A. R. Unpingco

AN ACT TO REPEAL THE
IMPLEMENTATION DATE OF REVISED
ARTICLE 9 OF TITLE 13 GUAM CODE
ANNOTATED AND TO CREATE A
TASKFORCE TO RECOMMEND
REVISIONS TO TITLE 13 OF THE
GUAM CODE ANNOTATED KNOWN AS
THE UNIFORMED COMMERCIAL CODE.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 previous attempts to update the Uniformed Commercial Code also referred
4 to as "UCC" by adopting Revised Article Nine relative to Secured
5 Transaction have failed and this process could only be done by bringing the
6 entire "UCC" up to date. Adopting Revised Article Nine makes references
7 to other Articles within the "UCC" which contains the following articles:
8 Revised Article 1 General Provisions; Revised Article 2 Sales; Revised

1 Article 2A Leases; Revised Article 3 Negotiable Instruments; Revised
2 Article 4 Bank Deposits and Collections; Revised Article 4A Fund Transfers;
3 Revised Article 5 Letters of Credits; Revised Article 6 Bulk Sales; Revised
4 Article 7 Documents of Title; Revised Article 8 Investment Securities.
5 Article 2A dealing with personal property leases and Article 4A dealing
6 with electronic fund transfers are currently not part of Guam's current
7 Code. The other Articles have had numerous additions and deletions
8 which are not reflected in Guam's Code. The Committee which has
9 oversight on Insurance and Banking has been meeting with the Guam
10 Bankers Association and such meetings not only produced an updated
11 revised Article 9 but also a recommendation that a full and complete Article
12 by Article revision be undertaken. Although this project appears to be
13 monumental, it is the intent of *I Liheslaturan Guåhan* to assign the various
14 Articles among the members impacted; this project should be completed by
15 November, 2006. It is also the intent of *I Liheslaturan Guåhan* to repeal the
16 respective Public Laws adopted to implement Revised Article 9 and the
17 original Guam Code Annotated Article 9 remains the law to be followed.

18 **Section 2.** Public Law 26-172 is hereby repealed.

19 **Section 3.** Public Law 27-40 is hereby repealed.

20 **Section 4.** Section 36 of Chapter V of Public Law 26-106 is hereby repealed.

1 **Section 5.** Public Law 28-67 is hereby repealed.

2 **Section 6. Savings Provision.** Any security interest perfected under the
3 UCC, Revised Article 9 as enacted by Public Law 26-172 between the date of
4 its enactment and the effective date of Public Law 27-40 shall be deemed to
5 have been perfected under Division 9 of Title 13 of the Guam code
6 Annotated. Any security interest perfected between the date of enactment
7 of Public Law 26-72 and the effective date of Public Law 27-40 in the
8 manner provided by Division 9 of Title 13 of the Guam Code Annotated
9 prior to its repeal by Public Law 26-172 shall likewise be deemed to have
10 been perfected under Division 9 of Title 13 of the Guam Code Annotated as
11 if Public Law 26-172 had never been enacted. Any security interest
12 perfected during the time period between P.L. 26-172 and the enactment of
13 this act shall be deemed valid if it was perfected correctly pursuant to the
14 laws at that time. By mutual consent, parties to a security agreement may
15 amend their security agreement to conform to the new law.

16 No contract, security agreement or security interest entered into between
17 the enactment of P. L. 26-172 and the enactment hereof present shall be
18 declared invalid or unenforceable because of minor defects therein caused
19 by changes on Article 9 or a party's misunderstanding of the state of Article

1 9. The courts shall construe any agreement or related document containing
2 such a defect so as to do substantial justice.

3 **Section 7. Reenactment.** Except as provided in Section 6 hereof, Division 9
4 of Title 13 of the Guam Code Annotated as it existed immediately prior to
5 the enactment of Public Law 26-172 is hereby reenacted effective as of the
6 date of enactment of Public Law 26-172. The original Division 9 of Article
7 13 of Guam Code Annotated is attached as exhibit A.

8 **Section 8. Creation of Taskforce.** A Taskforce comprising of the Chairman,
9 Committee on Tourism, Maritime, Military and Veterans Affairs along with the
10 Presiding Officer or his/her Designee from the Guam Bankers Association, Guam
11 Auto Dealers Association, Guam Bar Association along with the Compiler of Law
12 and a representative from the Chamber of Commerce who are impacted by Title
13 13 is hereby created for the purpose of drafting a complete revision of Title 13
14 Guam Code Annotated relative to the Uniform Commercial Code. The final draft
15 of Revised Title 13 Guam Code Annotated shall be transmitted to *I Liheslaturan*
16 *Guåhan* for adoption.

17