

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1058
By: Carona
Economic Development
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Committee Report (Substituted)

DIGEST

Currently, in Texas, Chapter 9 of the Business & Commerce Code follows Article 9 of the Uniform Commercial Code (UCC), stating the rights and duties concerning secured transactions. The official sponsors of the UCC have proposed a series of amendments to Article 9. The recommendations both clarify the legal obligations of parties involved in secured transactions and harmonize Article 9 with modern commercial practices with respect to secured transactions. This bill would revise the Texas enactment of Article 9.

PURPOSE

As proposed, C.S.S.B. 1058 revises the uniform law on secured transactions.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Secretary of State in ARTICLE 1(Section 9.526, Business & Commerce Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SECURED TRANSACTIONS

SECTION 1.01. Amends Chapter 9, Business & Commerce Code, as follows:

CHAPTER 9. New heading: SECURED TRANSACTIONS

SUBCHAPTER A. New heading: SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

Sec. 9.101. SHORT TITLE: Uniform Commercial Code--Secured Transactions.

Sec. 9.102. New heading: DEFINITIONS AND INDEX OF DEFINITIONS. Defines "accession," "account," "account debtor," "accounting," "agricultural lien," "as-extracted collateral," "authenticate," "bank," "cash proceeds," "certificate of title," "chattel paper," "collateral," "commercial tort claim," "commodity account," "commodity contract," "commodity customer," "commodity intermediary," "communicate," "consignee," "consignment," "consignor," "consumer debtor," "consumer goods," "consumer-goods transaction," "consumer obligor," "consumer transaction," "continuation statement," "debtor," "deposit account," "document," "electronic chattel paper," "encumbrance," "equipment," "farm products," "farming operation," "file number," "filing office," "filing-office rule," "financing statement," "fixture filing," "fixtures," "general intangible," "good faith," "goods," "governmental unit," "health-care-insurance receivable," "instrument," "inventory," "investment property," "jurisdiction of organization," "letter-of-credit right," "lien creditor," "manufactured home," "manufactured-home transaction," "mortgage," "new debtor," "new value," "noncash proceeds," "nonnegotiable certificate of deposit," "obligor," "original debtor," "payment intangible," "person related to, with respect to an individual," "person related to, with respect to an organization," "proceeds," "promissory note," "proposal," "public-finance transaction," "pursuant to commitment," "record," "registered organization," "secondary obligor," "secured party," "security agreement," "send," "software," "state," "supporting obligation," "tangible chattel paper," "termination statement," and "transmitting utility." Sets forth definitions in other chapters which apply to this chapter. Deletes existing text concerning the policy and subject matter of the chapter. Deletes existing Section 9.103 concerning the perfection of security interests in multiple state transactions. Deletes existing

Section 9.104 concerning transactions excluded from this chapter. Deletes existing Section 9.105 providing definitions and an index to the definitions.

Sec. 9.103. PURCHASE-MONEY SECURITY INTEREST; APPLICATION OF PAYMENTS; BURDEN OF ESTABLISHING. Defines “purchase-money collateral” and “purchase-money obligation.” Sets forth to what extent a security interest in goods is a purchase-money security interest. Sets forth to what extent a security interest in software is a purchase-money security interest. Provides that the security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory. Requires, in a transaction other than a consumer-goods transaction, the payment to be applied in a certain method or order under certain conditions, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation. Provides that in a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even under certain conditions. Provides that in a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest. Provides that the limitation of the rules in Subsections (e)-(g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. Prohibits the court from inferring from that limitation the nature of the proper rule in consumer-goods transactions, and authorizes the court to continue to apply established approaches.

Sec. 9.104. CONTROL OF DEPOSIT ACCOUNT. Sets forth the conditions under which a secured party has control of a deposit account. Provides that a secured party that has satisfied Subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Sec. 9.105. CONTROL OF ELECTRONIC CHATTEL PAPER. Sets forth the conditions under which a secured party has control of electronic chattel paper.

Sec. 9.106. CONTROL OF INVESTMENT PROPERTY. Provides that a person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8.106. Sets forth the conditions under which a secured party has control of a commodity contract. Provides that a secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or the commodity account.

Sec. 9.107. CONTROL OF LETTER-OF-CREDIT RIGHT. Provides that a secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 5.114(c) or otherwise applicable law or practice. Deletes existing Section 9.106 defining “account” and “general intangibles.” Deletes existing Section 9.107 defining “purchase money security interest.” Deletes existing Section 9.108 concerning when after acquired collateral is not security for an antecedent debt. Deletes existing Section 9.109 to define “consumer goods,” “equipment,” “farm products,” and “inventory.”

Sec. 9.108. SUFFICIENCY OF DESCRIPTION. Redesignates existing Section 9.110 as Section 9.108. Provides that except as otherwise provided in Subsections (c), (d), and (e), a description of personal and real property is sufficient, whether or not it is specific, if it reasonably identifies what is described. Provides that a description of collateral reasonably identifies the collateral if it identifies the collateral by certain descriptions, except as otherwise provided in Subsection (d). Provides that the description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral. Provides that a description of a security entitlement, securities account, or commodity account is sufficient if it provides certain descriptions, except as otherwise provided in Subsection (e). Provides that a description only by type of collateral defined in this title is an insufficient description of certain claims, or in certain transactions or for certain goods or accounts.

Sec. 9.109. SCOPE. Sets forth the scope of this chapter, except as otherwise provided in Subsections (c), (d), and (e). Provides that the application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction

or interest to which this chapter does not apply. Provides that this chapter does not apply to the extent certain laws preempt this chapter or expressly govern a security interest or the rights of a transferee beneficiary or nominated person under a letter of credit are independent or superior under Section 5.114. Provides that this chapter does not apply to certain liens, assignments, sales, transfers, right of recoupments or set-offs, the creation or transfer of certain interests, the interest of a vendor or vendee in a contract for deed to purchase an interest in real property, or the interest of an optioner or optionee in an option to purchase an interest in real property. Provides that the application of this chapter to the sale of accounts, chattel paper, payment intangibles, or promissory notes is not to recharacterize that sale as a transaction to secure indebtedness but to protect purchasers of those assets by providing a notice filing system. Requires the parties' characterization of a transaction as a sale of such assets, for all purposes, in the absence of fraud or intentional misrepresentation, to be conclusive that the transaction is a sale and is not a secured transaction and that title has passed to the party characterized as the purchaser regardless of whether the secured party has any recourse against the debtor, whether the debtor is entitled to any surplus, or any other term of the parties' agreement. Deletes existing Section 9.112 concerning transactions where collateral is not owned by the debtor.

Sec. 9.110. New heading: SECURITY INTERESTS ARISING UNDER CHAPTER 2 OR 2A. Redesignates existing Section 9.113 as Section 9.110. Provides that a security interest arising under, rather than solely under, Section 2.401, 2.505, 2.711(c), or 2A.508(e), rather than the chapter on Sales (Chapter 2) or the chapter on Leases (Chapter 2A), is subject to this chapter. Provides that until the debtor obtains possession of the goods the security interest is enforceable, even if Section 9.203(b)(3) has not been satisfied, filing is not required to perfect the security interest, the rights of the secured party after default by the debtor are governed by Chapter 2 or 2A, and the security interest has priority over a conflicting security interest created by the debtor, rather than a conflicting security interest created by the debtor in the case of a security interest arising solely under such chapter. Deletes existing Section 9.114 regarding consignment. Deletes existing Section 9.115 regarding investment property. Deletes existing Section 9.116 regarding security interests arising in the purchase or delivery of a financial asset. Makes conforming and nonsubstantive changes.

SUBCHAPTER B. New heading: EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

Sec. 9.201. New heading: GENERAL EFFECTIVENESS OF SECURITY AGREEMENT. Provides that a transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and to Title 4, Finance Code, and Chapter 17E. Provides that in case of conflict between this chapter and a rule of law, statute, or regulation described in Subsection (b), the rule of law, statute, or regulation controls. Provides that failure to comply with a statute or regulation described in Subsection (b) has only the effect the statute or regulation specifies. Provides that this chapter does not validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in Subsection (b), or extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it. Deletes text limiting the rules of law, statutes, or regulations to those governing usury, small loans, retail installment sales, or the like. Makes nonsubstantive changes.

Sec. 9.202. TITLE TO COLLATERAL IMMATERIAL. Provides that the provisions of this chapter with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor, except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes. Deletes text providing that the provisions of this chapter applies with regard to remedies. Makes nonsubstantive changes.

Sec. 9.203. New heading: ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES. Provides that a security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment. Provides that a security interest is enforceable against the debtor and third parties, rather than or third parties, with respect to the collateral only if value has been given, the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party, and one of several certain conditions is met, except as otherwise provided in Subsections (c)-(j).

Provides that Subsection (b) is subject to certain sections of this chapter on certain issues. Provides that a person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract certain conditions occur. Provides that if a new debtor becomes bound as debtor by a security agreement entered into by another person the agreement satisfies Subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement and another agreement is not necessary to make a security interest in the property enforceable. Provides that the attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9.315, rather than 9.306, and is also attachment of a security interest in a supporting obligation for the collateral. Provides that the attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien. Provides that the attachment of a security interest in a securities account is also an attachment of a security interest in the security entitlements carried in the securities account. Provides that the attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account. Provides that if a secured party holds a security interest that applies under this chapter to minerals upon their extraction, and the security interest also qualifies under applicable law as a lien on those minerals before their extraction, the security interest before and after production is a single continuous and uninterrupted lien on the property. Provides that this subsection is a statement of the law of this state as it existed before the effective date of this subsection and applies with respect to minerals regardless of when the minerals were extracted. Deletes text providing that a transaction, although subject to this chapter, is also subject to Title 79, the provisions of any such statute control in the case of a conflict, and failure to comply with any applicable statute has only the specified effect. Makes nonsubstantive changes. Deletes text providing that the previous provision is subject to certain sections of this chapter and setting forth conditions under which a security interest is not enforceable and does not attach. Deletes text regarding when a security interest attaches. Deletes text regarding a security interest in minerals.

Sec. 9.204. **AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES.** Authorizes a security agreement to create or provide for a security interest in after-acquired collateral, except as provided for in Subsection (b). Prohibits a security interest from attaching under a term constituting an after-acquired property clause to certain goods and claims. Authorizes a security agreement to provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value. Makes conforming changes.

Sec. 9.205. New heading: **USE OR DISPOSITION OF COLLATERAL PERMISSIBLE.** Provides that a security interest is not invalid or fraudulent against creditors solely because the debtor has the right or ability to collect, compromise, enforce, or otherwise deal with collateral, accept the return of collateral or make reposessions, or the secured party fails to require the debtor to account for proceeds or replace collateral. Provides that this section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party, rather than by the secured party or by a bailee. Makes conforming and nonsubstantive changes.

Sec. 9.206. New heading: **SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET.** Provides that a security interest in favor of a securities intermediary attaches to a person's security entitlement under certain conditions. Provides that the security interest described in Subsection (a) secures the person's obligation to pay for the financial asset. Provides that a security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset under certain conditions, and the agreement calls for delivery against payments. Provides that the security interest described in Subsection (c) secures the obligation to make payment for the delivery. Deletes existing section regarding agreement not to assert defenses against assignees and the modification of sales warranties where a security agreement exists.

Sec. 9.207. New heading: **RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL.** Requires a secured party to use reasonable care in the custody and preservation of collateral in the secured party's possession, except as otherwise provided in Subsection (d). Requires the secured party, if the secured party has

possession of the collateral, to keep the collateral identifiable, but fungible collateral may be commingled, and authorizes the secured party to use or operate the collateral under certain conditions, except as otherwise provided by Subsection (d). Authorizes a secured party, except as provided in Subsection (d), having possession or control of collateral under Section 9.104, 9.105, 9.106, or 9.107 to hold as additional security any proceeds, except money or funds, received from the collateral. Requires such secured party to apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor, and authorizes the secured party to create a security interest in the collateral. Provides that if the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a cosignor, Subsection (a) does not apply unless the secured party is provided certain entitlements under an agreement, and Subsections (b) and (c) do not apply. Deletes text authorizing the secured party to hold as additional security any increase or profits (except money) received from the collateral, and requiring money received to be applied in reduction of the secured obligation, unless remitted to the debtor. Deletes text authorizing the secured party to repledge the collateral upon terms which do not impair the debtor's right to redeem it. Deletes text providing that a secured party with possession or control of collateral is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest. Deletes text authorizing a secured party to use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to a court order or, except in the case of consumer goods, in the manner provided in a security agreement. Makes conforming and nonsubstantive changes.

Sec. 9.208. New heading: **ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL**. Provides that this section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value. Sets forth requirements for a secured party, within 10 days after receiving an authenticated demand by the debtor, having control of a deposit account under Section 9.104(a)(2).

Sec. 9.209. **DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT**. Provides that this section applies under certain conditions, except as otherwise provided in Subsection (c). Requires a secured party to send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 9.406(a), within 10 days after receiving an authenticated demand by the debtor, an authenticated record that releases the account debtor from any further obligation to the secured party. Provides this section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Sec. 9.210. New heading: **REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT**. Defines "request," "request for an accounting," "request regarding a list of collateral," and "request regarding a statement of account." Requires the secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a cosignor, to comply with a request within 14 days after receipt, by performing certain duties, subject to Subsections (c), (d), (e), and (f). Authorizes a secured party that claims a security interest in all of a particular type of collateral owned by the debtor to comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect by a certain date. Requires a person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time to comply with the request by a certain date by sending to the debtor an authenticated record containing certain information. Requires a person that receives a request regarding a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time to comply with the request by a certain date by sending to the debtor an authenticated record containing certain information. Provides that a debtor is entitled without charge to one response to a request under this section during any six-month period. Authorizes a secured party to require payment of a charge not exceeding \$25 for each additional response. Deletes text authorizing a debtor, when the security agreement or any other record kept by the secured party identifies the collateral, to request the secured party to approve or correct a list of the collateral. Deletes text authorizing a debtor to sign certain statements. Deletes text providing that if the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor. Deletes text requiring the secured party to disclose the name and address of any successor in interest known to him. Deletes text providing

that a successor in interest is not subject to this section until a request is received by him. Deletes text providing that a debtor is entitled to a statement from a request once every six months without charge. Deletes text authorizing the secured party to require payment of a charge not exceeding \$10 for each additional statement furnished. Makes conforming and nonsubstantive changes.

SUBCHAPTER C. New heading: PERFECTION AND PRIORITY

Sec. 9.301. New heading: LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Sets forth rules governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral, except as otherwise provided in Sections 9.303 - 9.306.

Sec. 9.302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. Provides that while farm products are located in a jurisdiction, the local law of that jurisdiction governs perfections, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

Sec. 9.303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE. Provides that this section applies to goods covered by a certificate of title. Provides that goods become covered by a certificate of title when a valid application for the certificate title and the applicable fee are delivered to the appropriate authority. Provides that goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction. Provides that the local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Sec. 9.304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS. Provides that the local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank. Sets forth the rules determining a bank's jurisdiction for the purposes of this subchapter.

Sec. 9.305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. Sets forth rules governing perfection and priority of security interests in investment property, except as otherwise provided in Subsection (c). Sets forth rules determining a commodity intermediary's jurisdiction for the purposes of this subchapter. Sets forth circumstances under which the local law of the jurisdiction in which the debtor is located governs.

Sec. 9.306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS. Provides that the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state, subject to Subsection (c). Provides that for the purposes of this subchapter, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 5.116. Provides that this section does not apply to a security interest that is perfected only under Section 9.308(d).

Sec. 9.307. LOCATION OF DEBTOR. Defines "place of business." Sets forth rules determining a debtor's location, except as otherwise provided in this section. Provides that Subsection (b) applies only if a debtor's residence, place of business, or chief executive office is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. Provides that if Subsection (b) does not apply, the debtor is located in the District of Columbia. Provides that a person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by Subsections (b)

and (c). Provides that a registered organization that is organized under the law of a state is located in that state. Sets forth the rules determining where a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located, except as otherwise provided in Subsection (i). Provides that a registered organization continues to be located in the jurisdiction specified by Subsection (e) or (f) notwithstanding certain actions affecting the registered organization. Provides that the United States is located in the District of Columbia. Provides that a branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state. Provides that a foreign air carrier under the Federal Aviation Air Act of 1958 is located at the designated office of the agent upon which service of process may be made on behalf of the carrier. Provides that this section applies only for the purposes of this subchapter.

Sec. 9.308. **WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED; CONTINUITY OF PERFECTION.** Provides that a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9.310 - 9.316 have been satisfied, except as otherwise provided in this section and Section 9.309. Provides that a security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches. Provides that an agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9.310 have been satisfied. Provides that an agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective. Provides that a security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected. Provides that perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral. Provides that perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right. Provides that perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account. Provides that perfection of a security interest in a commodity account also perfects a security interest in the commodities contracts carried in the commodity account. Deletes text concerning persons who take priority over unperfected security interests and the rights of a "lien creditor."

Sec. 9.309. New heading: **SECURITY INTEREST PERFECTED UPON ATTACHMENT.** Sets forth certain types of security interests that are perfected when they attach. Deletes text regarding when filing is required to perfect a security interest and setting forth the security interests to which filing provisions of this article do not apply. Redesignates Section 9.302 as Section 9.309.

Sec. 9.310. **WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.** Requires a financing statement to be filed to perfect all security interests and agricultural liens, except as otherwise provided in Subsection (b) and Section 9.312(b). Provides that the filing of a financing statement is not necessarily to perfect a security interest under certain conditions. Provides that if a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. Makes conforming and nonsubstantive changes.

Sec. 9.311. **PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.** Provides that the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9.310(a), except as otherwise provided in Subsection (d). Provides that the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property. Provides that compliance with the requirements of a statute, regulation, or treaty described in Subsection (a) is equivalent to the filing of a financing

statement under this chapter. Authorizes a security interest in property subject to a statute, regulation, or treaty described in Subsection (a) to be perfected only by compliance with those requirements, and provides that a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral, except as provided in Subsection (d) and Sections 9.313 and 9.316(d) and (e) for goods covered by a certificate of title. Provides that duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in Subsection (a) are governed by the statute, regulation, or treaty. Provides that during any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor. Deletes text providing that filing is not necessary to perfect a security interest in property subject to a statute, or treaty of the United States which provides for a national or international registration of certificate of title. Deletes text providing that the filing provisions of this subchapter apply to a security interest. Deletes existing Section 9.303 regarding when a security interest is perfected and the continuity of perfection. Makes conforming and nonsubstantive changes.

Sec. 9.312. New heading: **PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.** Authorizes a security interest in instruments or investment property to be perfected by filing. Sets forth rules for perfection of security interests. Sets forth the procedure for perfection of a security interest in goods that are in the possession of a bailee that has issued a negotiable document covering the goods and the priority of such a security interest. Sets forth the procedure for perfection of a security interest in goods that are in the possession of a bailee that has issued a nonnegotiable document covering the goods. Provides that a security interest in instruments is perfected without filing or the taking of possession for a period of 20 days, rather than 21 days, from the time it attaches to the extent that it arises for new value given under an authenticated, rather than a written, security agreement. Provides that a perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for a period of 20 days, rather than 21 days, without filing if the secured party performs certain actions. Sets forth the conditions under which a perfected security interest in a certificated security or instrument remains perfected for 20 days without filing. Provides that after the 20-day, rather than the 21-day, period specified in Subsection (e), (f) or (g) expires, perfection depends upon compliance with this chapter. Deletes text establishing the point when possession of a nonnegotiable certificate of deposit in which the secured party is the issuer of the document exists; text setting forth when such possession takes priority, text setting forth the procedure for perfection of a security interest in goods in the possession of the issuer of the negotiable document; text setting forth the procedure for the perfection of security interest in goods in the possession of a bailee; and text concerning the perfection of a security interest without filing. Redesignates Section 9.304 as Section 9.312. Makes conforming and nonsubstantive changes.

Sec. 9.313. New heading: **WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.** Authorizes a secured party to perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral, except as provided in Subsection (b). Authorizes a secured party to perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8.301. Authorizes a secured party to perfect a security interest in goods covered by a certificate of title by taking possession of the goods only under certain circumstances. Sets forth the circumstances under which a secured party takes possession of collateral in the possession of a person other than the debtor, with respect to collateral other than certificated securities and goods covered by a document. Provides that if perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession. Sets forth the procedure for the perfection by delivery and continuation of perfection by delivery of a security interest in a certificated security in registered form. Provides that a person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit. Provides that if a person acknowledges that it holds possession for the secured

party's benefit, the acknowledgment is effective even if the acknowledgment violates the rights of a debtor and the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person, unless otherwise agreed. Provides that a secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before or contemporaneously with the delivery to perform certain actions. Provides that a secured party does not relinquish possession, even if a delivery under Subsection (h) violates the rights of a debtor. Provides that a person to which collateral is delivered does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or other law provides. Deletes text providing for perfection by possession of letters of credit and advices of credit, and chattel paper. Redesignates Section 9.305 as Section 9.313.

Sec. 9.314. **PERFECTION BY CONTROL.** Authorizes a security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper to be perfected by control of the collateral. Provides that a security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under Section 9.104, 9.105, or 9.107 when the secured party obtains control and remains perfected by control only while the secured party retains control. Sets forth the circumstances under which a security interest in investment property is perfected and remains perfected by control. Deletes text regarding perfection by possession for certain security interests.

Sec. 9.315. **New heading: SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS.** Provides that a security interest or agricultural lien continues in collateral notwithstanding lease or license unless the secured party authorized the disposition free of the security interest or agricultural lien; and a security interest attaches to any identifiable proceeds of collateral, except as otherwise provided in this chapter and Section 2.403(b). Provides that proceeds that are commingled with other property are identifiable proceeds under certain circumstances. Provides that a security interest in proceeds is a perfected security interest, rather than a continuously perfected security interest, if the interest in the original collateral was perfected. Provides that a perfected security interest in proceeds becomes unperfected on the 21st day, rather than 10 days, after the security interest attaches to receipt of the proceeds unless certain conditions are satisfied. Provides that if a filed financing statement covers the original collateral, a security interest in proceeds that remains perfected under Subsection (d)(1) becomes unperfected by a certain date. Deletes the definition of "proceeds"; certain conditions required for a perfected security interest in proceeds to remain perfected; text regarding security interests in proceeds and a secured party's rights on the disposition of collateral. Redesignates Section 9.306 as Section 9.315. Makes conforming and nonsubstantive changes.

Sec. 9.316. **CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW.** Sets forth the circumstances under which a perfected security interest becomes unperfected. Provides that if a security interest described in Subsection (a) becomes perfected under the law of another jurisdiction before the earliest time or event described, it remains perfected thereafter. Provides that if the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value. Provides that a possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected under certain circumstances. Provides that a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered, except as provided in Subsection (e). Provides that a security interest described in Subsection (d) becomes unperfected as against a purchaser of goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection are not satisfied by a certain date. Provides that a security interest in deposit accounts, letter-of-credit rights, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction remains perfected until a certain date. Provides that if a security interest described in Subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period

described in that subsection, it remains perfected thereafter. Provides that if the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Sec. 9.317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF UNPERFECTED SECURITY INTEREST OR AGRICULTURAL LIEN. Provides that an unperfected security interest or agricultural lien is subordinate to the rights of certain persons. Provides that a buyer, other than secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected, except as otherwise provided in Subsection (e). Provides that a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected. Provides that a licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected. Provides that if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of the buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing, except as provided in Sections 9.320 and 9.321.

Sec. 9.318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS. Provides that a debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold. Provides that for purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

Sec. 9.319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS. Provides that for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer, except as provided in Subsection (b). Provides that for the purposes of determining the rights of a creditor of a consignee, other law determines the rights and title of a consignee while goods are in the consignee's possession if a perfected security interest held by the consignor would have priority over the rights of the creditor.

Sec. 9.320. New heading: BUYERS OF GOODS. Provides that a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, if the buyer buys under certain conditions, except as provided in Subsection (e). Provides that to the extent that it affects the priority of a security interest over a buyer of goods under Subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Sections 9.316(a) and (b). Provides that a buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance. Provides that Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under Section 9.313. Deletes text regarding when a buyer other than a buyer in ordinary course of business takes free of a security interest; and text prohibiting a secured party from enforcing a security interest in farm products under certain circumstances. Redesignates Section 9.307 as Section 9.320. Makes conforming and nonsubstantive changes.

Sec. 9.321. New heading: LICENSEE OF GENERAL INTANGIBLE AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS. Defines "licensee in ordinary course of business." Provides that a licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence. Provides that a lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods

created by the lessor. Deletes text existing Sections 9.309 - 9.311. Redesignates Section 9.308 as Section 9.321.

Sec. 9.322. New heading: PRIORITIES AMONG CONFLICTING SECURITY INTEREST IN AND AGRICULTURAL LIENS ON SAME COLLATERAL. Sets forth rules determining priority among conflicting security interests and agricultural liens in the same collateral, except as provided in this section. Sets forth provisions regarding the time of filing or perfection as to a security interest in collateral. Provides that a security interest in collateral that qualifies for priority over a conflicting security interest under Section 9.327, 9.328, 9.329, 9.330, or 9.331 also has priority over a conflicting security interest under certain circumstances, except as provided in Subsection (f). Provides that if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing, subject to Subsection (e) and except as otherwise provided in Subsection (f). Provides that Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, investment property, or letter-of-credit rights. Provides that Subsections (a)-(e) are subject to certain other sections. Provides that a perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Sec. 9.323. FUTURE ADVANCES. Provides that for the purposes of determining the priority of a perfected security interest under Section 9.322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures certain advances, except as provided in Subsection (c). Provides that security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures certain advances unless the advance is made under certain circumstances, except as provided in Subsection (c). Provides that Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor. Provides that a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after a certain date, except as provided in Subsection (e). Provides that Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period. Provides that a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after a certain date, except as provided in Subsection (g). Provides that Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Sec. 9.324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS. Provides that a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, except as provided in Subsection (g), and provides that a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter, except as provided in Section 9.327. Provides that a perfected purchase-money security interest in inventory has priority over certain conflicting security interests and identifiable cash proceeds of the inventory under certain circumstances, with certain exceptions, and subject to certain sections. Provides that Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory under certain circumstances. Provides that a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, subject to Subsection (e) and except as provided in Subsection (g), and provides that a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority under certain circumstances, except as provided in Section 9.327. Provides that Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock under certain circumstances. Provides that a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, except as provided in Subsection (g), and provides that a perfected security interest in its identifiable proceeds also has priority, except as provided in Section 9.327. Provides that if more than one security interest qualifies for priority in the same collateral under Subsection (a), (b), (d), or (f), a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a

security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral, and in all other cases, Section 9.322(a) applies to the qualifying security interests. Deletes text setting forth the rules of priority concerning certain security interests; text setting forth the rules for determining priority in all cases not governed by other rules in this section; text stating the date of filing or perfection as to proceeds; and text regarding security interests in future advances. Makes conforming and nonsubstantive changes.

Sec. 9.325. **PRIORITY OF SECURITY INTERESTS IN TRANSFERRED COLLATERAL.** Sets forth conditions under which a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person. Sets forth conditions where Subsection (a) subordinates a security interest.

Sec. 9.326. **PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR.** Provides that a security interest created by a new debtor that is perfected by a filed financing statement that is effective solely under Section 9.508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected other than by a filed financing statement, subject to Subsection (b). Provides that the other provisions of this subchapter determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 9.508. Provides that if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Sec. 9.327. **PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNT.** Sets forth the rules governing priority among conflicting security interests in the same deposit account.

Sec. 9.328. **PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.** Sets forth the rules governing priority among conflicting security interests in the same investment property.

Sec. 9.329. **PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHT.** Sets forth the rules governing priority among conflicting security interests in the same letter-of-credit right.

Sec. 9.330. **PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.** Provides that a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest under certain circumstances. Provides that a purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party. Provides that a purchaser having priority in chattel paper also has priority in proceeds of the chattel paper under certain circumstances, except as provided in Section 9.327. Provides that a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party, except as provided in Section 9.331(a). Provides that the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory. Provides that if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Sec. 9.331. **PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 8.** Provides that this chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. Provides that these holders or purchasers take priority over an earlier security interest. Provides that this chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim. Provides that filing does not constitute notice of a claim or defense to certain holders, purchasers,

or persons.

Sec. 9.332. **TRANSFER OF MONEY; TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT.** Provides that a transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party. Provides that a transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Sec. 9.333. **PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.** Defines “possessory lien.” Provides that a possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Sec. 9.334. New heading: **PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS.** Provides that in cases not governed by Subsections (d)-(h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor. Provides that a perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and certain other circumstances exist, except as provided in Subsection (h). Provides that a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property under certain circumstances. Provides that the priority of the security interest under Subsection (f) continues for a reasonable time if the debtor’s right to remove the goods as against the encumbrancer or owner terminates. Provides that a mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, if a recorded record of the mortgage so indicates. Provides that mortgage has a certain priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage. Provides that a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property. Redesignates Section 9.313 as Section 9.334. Deletes definitions of “fixtures,” “fixture filing,” and “construction mortgage.” Deletes text concerning security interests in fixtures in certain circumstances; and text concerning situations in which the secured party has priority over all owners and encumbrances of the real property. Makes conforming and nonsubstantive changes.

Sec. 9.335. **ACCESSIONS.** Authorizes a security interest to be created in an accession and continues in collateral that becomes an accession. Provides that if a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral. Provides that the other provisions of this subchapter determine the priority of a security interest in the accession, except as provided in Subsection (d). Provides that a security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under Section 9.311(b). Authorizes a secured party to remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole, after default. Requires a secured party that removes an accession from other goods under Subsection (e) to promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. Redesignates Section 9.314 as Section 9.335. Deletes text redefining “accessions.” Deletes text concerning situations in which a security interest attaches to goods after they become part of a whole; text providing that the security interest described in Subsections (a) and (b) does not take priority over certain people; and text stating certain conditions under which a secured party may remove collateral from the whole.

Sec. 9.336. New heading: **COMMINGLED GOODS.** Defines “commingled goods.” Provides that a security interest does not exist in commingled goods as such. Authorizes a security interest to attach to a product or mass that results when goods become commingled goods. Provides that if collateral becomes commingled goods, a security interest attaches to the product or mass. Provides that the other provisions of this subchapter determine the priority of a security interest that attaches to the product or mass under Subsection (c), except as provided in Subsection (f). Sets forth the rules determining priority if more than one security interest attaches to the product or mass. Redesignates Section 9.315 as Section 9.336. Deletes text providing certain situations

in which the security interest continues in the product or mass.

Sec. 9.337. **PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE.** Sets forth the consequences if, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate.

Sec. 9.338. **PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION.** Sets forth rules governing when a security interest or agricultural lien is perfected by a filed financing statement providing information that is incorrect at the time the financing statement is filed.

Sec. 9.339. **PRIORITY SUBJECT TO SUBORDINATION.** Provides that this chapter does not preclude subordination by agreement by a person entitled to priority. Redesignates Section 9.316 as Section 9.339. Makes conforming and nonsubstantive changes.

Sec. 9.340. **EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT.** Authorizes a bank with which a deposit account is maintained to exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account, except as provided in Subsection (c). Provides that the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party, except as provided in Subsection (c). Provides that the exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under Section 9.104(a)(3), if the set-off is based on a claim against the debtor.

Sec. 9.341. **BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT.** Provides that a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by certain actions, except as otherwise provided in Section 9.340(c), and unless the bank otherwise agrees in an authenticated record.

Sec. 9.342. **BANK'S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT.** Provides that this chapter does not require a bank to enter into an agreement of the kind described in Section 9.104(a)(2), even if its customer so requests or directs. Provides that a bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Sec. 9.343. **OIL AND GAS INTERESTS: SECURITY INTEREST PERFECTED WITHOUT FILING; STATUTORY LIEN.** Provides that this section provides a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price. Provides that an authenticated record giving the interest owner a right under real property law operates as a security agreement created under this chapter. Provides that the act of the first purchaser in signing an agreement to purchase oil or gas production, in issuing a division order, or in making any other voluntary communication to the interest owner or any governmental agency recognizing the interest owner's right operates as an authentication of a security agreement. Provides that the security interest provided by this section is perfected automatically. Provides that if the interest of the secured party is evidenced by certain legal records recorded in the real property records of a county clerk, that record is effective as a filed financing statement, but no fee is required and there is no requirement of refiling every five years to maintain effectiveness of the filing. Provides that the security interest exists in oil and gas production, and also in the identifiable proceeds of that production owned by, received by, or due to the first purchaser for an unlimited time for certain proceeds and for the length of time provided in Section 9.315 for all other proceeds. Provides that this section creates a lien that secures the payment of all taxes that are or should be withheld or paid by the first purchaser and a lien that secures the rights of any person who would be entitled to a security interest under Subsection (a) except for lack of any adoption of a security agreement by the first purchaser or a lack of possession or record required by Section 9.203 for the security interest to be enforceable. Provides that the security interest and liens created by this section have priority over any purchaser

who is not a buyer in the ordinary course of the first purchaser's business, but are cut off by the sale to a buyer from the first purchaser who is in the ordinary course of the first purchaser's business under Section 9.320. Provides that in either case, a security interest will continue in the proceeds of the sale by the first purchaser as provided in Subsection (c). Sets forth the rules governing priorities of the security interests and all liens created by this section over other Chapter 9 security interests. Sets forth the rules governing priorities among the security interests and liens created by this section. Provides that the priorities for statutory liens mentioned in Section 9.333 do not apply to any security interest or statutory lien created by this section. Provides that if a pipeline common carrier has a statutory or tariff lien that is effective and enforceable against a trustee in bankruptcy and not invalidated by the Federal Tax Lien Act, that lien has priority over the security interests and statutory liens created by this section. Provides that if oil and gas production in which there are security interests or statutory liens created by this section is commingled with inventory or other production, the rules of Section 9.336 apply. Provides that a security interest or statutory lien created by this section remains effective against the debtor and perfected against the debtor's creditors even if assigned. Provides that if a deed, mineral deed, assignment of oil and gas lease, or other such record evidencing the assignment is filed in the real property records of the county, it will have the same effect as filing an amended financing statement under Section 9.514. Provides that this section does not impair an operator's right to set-off or withhold funds from other interest owners as security for or in satisfaction of any debt or security interest. Provides that in case of a dispute between an operator and another interest owner, a good faith tender of funds by anyone to the person who the operator and other interest owner agree on, to a person who otherwise shows himself or herself to be the one entitled to the funds, or to a court of competent jurisdiction in the event of litigation or bankruptcy operates as a tender of the funds to both. Authorizes a first purchaser who acts in good faith to terminate an interest owner's security interest or statutory lien under this section by paying, or by making and keeping open a tender of, the amount the first purchaser believes to be due to the interest owner to certain people under certain circumstances. Provides that a person who buys from a first purchaser can ensure that the person buys free and clear of an interest owner's security interest or statutory lien by performing certain actions. Provides that if a tender that is valid thereafter fails, the security interest and liens governed by this section remain effective. Provides that in addition to the usual remedy of sequestration available to secured parties, and the remedies given in Subchapter F, the holders of security interests and liens create by this section have available to them, to the extent constitutionally permitted, certain remedies. Provides that the rights of any person claiming under a security interest or lien created by this section are governed by the other provisions of this chapter except to the extent that this section necessarily displaces those provisions. Provides that this section does not invalidate or otherwise affect the interests of any person in any real property before severance of any oil or gas production. Provides that the security interest created under Subsections (a) and (b) do not apply to proceeds of gas production that have been withheld, in cash or account form, by a purchaser under Section 201.204(c), Tax Code. Defines "oil and gas production," "interest owner," "first purchaser," and "operator." Deletes existing Sections 9.317 - 9.319.

SUBCHAPTER D. New heading: RIGHTS OF THIRD PARTIES

Sec. 9.401. ALIENABILITY OF DEBTOR'S RIGHTS. Provides that whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by other law, except as provided in Subsection (b) and Sections 9.406 - 9.409. Provides that an agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

Sec. 9.402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR OR IN TORT. Provides that the existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Sec. 9.403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE. Defines "value." Provides that an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes certain assignments under certain conditions. Provides that Subsection 9(b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 3.305(b). Provides that in a consumer transaction,

if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims and defenses that the account debtor could assert against the original obligee, and the record does not include certain statements. Provides that this section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes. Provides that this section does not displace law other than this chapter that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee, except as provided in Subsection (d).

Sec. 9.404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND DEFENSES AGAINST ASSIGNEE. Provides that unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to Subsection (b)-(e), the rights of an assignee are subject to certain terms, defenses, and claims. Authorizes the claim of an account debtor against an assignor to be asserted against an assignee only to reduce the amount the account debtor owes, subject to Subsection (c) and except as provided in Subsection (d). Provides that this section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes. Provides that in a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement. Provides that this section does not apply to an assignment of a health-care-insurance receivable.

Sec. 9.405. MODIFICATION OF ASSIGNED CONTRACT. Provides that a modification of or substitution for an assigned contract is effective against an assignee if made in good faith. Provides that the assignee acquires corresponding rights under the modified or substituted contract. Authorizes the assignment to provide that the modification or substitution is a breach of contract by the assignor. Provides that this subsection is subject to Subsections (b)-(d). Sets forth the rights to payment to which Subsection (a) applies. Provides that this section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes. Provides that this section does not apply to an assignment of a health-care-insurance receivable.

Sec. 9.406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE. Authorizes an account debtor on an account, chattel paper, or a payment intangible to discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee, subject to Subsections (b)-(i). Authorizes the account debtor, after receipt of the notification, to discharge its obligation by paying the assignee, and prohibits the discharge of the obligation by paying the assignor. Provides that notification is ineffective under Subsection (a) under certain circumstances, subject to Subsection (h). Requires an assignee to seasonably furnish reasonable proof that the assignment has been made, if requested by the account debtor, subject to Subsection (h). Authorizes the account debtor to discharge its obligation by paying the assignor, unless the assignee complies. Sets forth actions the extent to which a term in an agreement between the account debtor and an assignor or in a promissory note is ineffective. Provides that Subsection (d) does not apply to the sale of a payment intangible or promissory note. Provides that a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to a certain extent. Prohibits an account debtor from waiving or varying its option under Subsection (b)(3), subject to Subsection (h). Provides that this section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes. Provides that this section does not apply to an assignment of a health-care-insurance receivable.

Sec. 9.407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST. Sets forth the rules governing when a term in a lease agreement is ineffective, except as otherwise provided in Subsection (b). Sets forth the rules governing when a term described in Subsection (a)(2) is effective, except as provided in Section 2A.303(g). Provides that the creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increase the burden or risk imposed on the lessee within the purview of Section 2A.303(d) unless enforcement actually results in a delegation of material performance of the lessor.

Sec. 9.408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE. Provides that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that certain events may occur. Provides that Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note. Provides that a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of certain entities or persons to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible between an account debtor and a debtor, is ineffective to a certain extent. Provides that to the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in Subsection (c) would be effective under other law but is ineffective under Subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible is not enforceable against certain people, and does not require, impose on a duty on, or entitle certain people to perform certain actions.

Sec. 9.409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT RIGHTS INEFFECTIVE. Provides that a term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to a certain extent. Provides that to the extent that a term in a letter of credit is ineffective under Subsection (a) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right is not enforceable against certain people, imposes no duties on certain people, and does not require certain people to recognize the security interest or pay or render performance to the secured party, or accept payment or other performance from the secured party.

SUBCHAPTER E. FILING

Sec. 9.501. New heading: FILING OFFICE. Sets forth the correct office to file a financing statement to perfect certain security interests or agricultural liens, except as provided in Subsection (b). Sets forth the proper place to file a financing statement to perfect a security interest in collateral of a transmitting utility. Provides that the financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures. Deletes text concerning erroneous filing and the removal of collateral.; and text concerning the proper place to file in order to perfect certain security interests. Redesignates Section 9.401 as Section 9.501.

Sec. 9.502. New heading: CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT. Provides that a financing statement is sufficient only if the statement includes certain information, subject to Subsection (b). Sets forth certain information required to be in a

financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, except as provided in Section 9.501(b). Sets forth the conditions under which a record of a mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut. Authorizes a financing statement to be filed before a security agreement is made or a security interest otherwise attaches. Deletes text setting forth formal requisites of a financing statement. Deletes certain conditions under which a record of a mortgage is effective as a financing statement. Redesignates Section 9.402 as 9.502. Makes conforming and nonsubstantive changes.

Sec. 9.503. **NAME OF DEBTOR AND SECURED PARTY.** Sets forth the rules governing when a financing statement sufficiently provides the name of the debtor. Provides that a financing statement that provides the name of the debtor in accordance with Subsection (a) is not rendered ineffective by the absence of certain information. Provides that a financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor. Provides that failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement. Authorizes a financing statement to provide the name of more than one debtor and the name of more than one secured party. Deletes text setting forth additional rules governing when a financing statement sufficiently provides the name of the debtor.

Sec. 9.504. **INDICATION OF COLLATERAL.** Provides that a financing statement sufficiently indicates the collateral that it covers only if the financing statement provides certain information.

Sec. 9.505. **FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS.** Sets forth other terms a consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may use in a financing statement or use to comply with a statute or treaty described in Section 9.311(a), instead of "secured party" and "debtor." Provides that this subchapter applies to the filing of a financing statement under Subsection (a) and to compliance that is equivalent to filing a financing statement under Section 9.311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. Provides that if it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer that attaches to the collateral is perfected by the filing or compliance.

Sec. 9.506. **EFFECT OF ERRORS OR OMISSIONS.** Provides that a financing statement substantially satisfying the requirements of this subchapter is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. Provides that a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9.503(a) is seriously misleading, except as provided in Subsection (c). Provides that if a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9.503(a), the name provided does not make the financing statement seriously misleading. Defines "debtor's correct name." Makes conforming and nonsubstantive changes.

Sec. 9.507. **New heading: EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.** Provides that a filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues. Provides that a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9.506, except as provided in Subsection (c) and Section 9.508. Sets forth the effects if a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 9.506. Deletes text stating what constitutes filing; text concerning the duration of a filing; and text concerning the effect of a lapsed filing and the duties of a filing officer. Redesignates Section 9.403 as Section 9.507.

Sec. 9.508. **EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.** Provides that a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new

debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral. Sets forth the effects if the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under Subsection (a) to be seriously misleading under Section 9.506. Provides that this section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9.507(a).

Sec. 9.509. PERSONS ENTITLED TO FILE A RECORD. Authorizes a person to file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only under certain conditions. Provides that a debtor or new debtor authorizes the filing of an initial financing statement covering certain collateral and property, by authenticating or becoming bound as a debtor by a security agreement. Provides that a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 9.315(a)(2) by acquiring collateral in which a security interest or agricultural lien continues under Section 9.315(a)(1). Authorizes a person to file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only under certain conditions. Authorizes each secured party of record to authorize the filing of an amendment under Subsection (d).

Sec. 9.510. EFFECTIVENESS OF FILED RECORD. Provides that a filed record is effective only to the extent that it was filed by a person that may file it under Section 9.509. Provides that a record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record. Provides that a continuation statement that is not filed within the six-month period prescribed by Section 9.515(d) is ineffective.

Sec. 9.511. SECURED PARTY OF RECORD. Provides that a secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. Provides that the assignee named in the initial financing statement is the secured party of record with respect to the financing statement, if an initial financing statement is filed under Section 9.514(a). Provides that person named in a filed amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is a secured party of record. Provides that the assignee named in an amendment filed under Section 9.514(b) is a secured party of record. Provides that a person remains a secured party of record until the filing of an amendment of the financing statement that deletes the person.

Sec. 9.512. AMENDMENT OF FINANCING STATEMENT. Authorizes a person to amend a financing statement, subject to Section 9.509 by filing an amendment containing certain information. Provides that the filing of an amendment does not extend the period of effectiveness of the financing statement, except as provided in Section 9.515. Provides that an amended financing statement with an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment. Provides that an amended financing statement with an amendment adding a debtor is effective as to the added debtor only from the date of the filing of the amendment. Sets forth the extent to which an amendment is ineffective. Authorizes a secured party to change the name or mailing address of the secured party in more than one filing statement by filing a master amendment setting forth certain information. Requires the secured party to also provide filing information in computer-readable form prescribed by the Secretary of State.

Sec. 9.513. TERMINATION STATEMENT. Requires a secured party to cause the secured party of record for a financing statement to file a termination statement for the financing statement under certain conditions. Requires a secured party to cause the secured party of record to file the termination statement by a certain date to comply with Subsection (a). Requires the secured party to cause the secured party of record for a financing statement to send the debtor a termination statement for the financing statement or file the termination statement in the filing statement under certain circumstances, within 20 days after a secured party receives an authenticated demand from a debtor, in cases not governed by Subsection (a). Provides that the financing statement to which the termination statement relates ceases to be effective upon the filing of a termination statement, except as provided in Section 9.510. Deletes text concerning the date by which a secured party must file the termination statement and the requirements for a termination statement and other

filing requirements. Redesignates Section 9.404 as Section 9.513. Makes conforming and nonsubstantive changes.

Sec. 9.514. New heading: ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD. Authorizes an initial financing statement to reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party, except as provided in Subsection (c). Authorizes a secured party of record to assign of record all or a part of its power to authorize an amendment to a financing statement by filing an amendment to the financing statement containing certain information. Authorizes an assignment of record of a security interest in a fixture covered by a record or a mortgage to be made only by an assignment of record of the mortgage in the manner provided by the law of this state. Authorizes a secured party of record to assign of record all of the secured party's rights under more than one financing statement by filing a master assignment. Requires the secured party to provide filing information in computer-readable form prescribed by the Secretary of State. Deletes text concerning the assignment of security interests; and text concerning the duties of the filing officers and fees. Redesignates Section 9.405 as Section 9.514. Makes conforming and nonsubstantive changes.

Sec. 9.515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT. Provides that a filed financing statement is effective for a period of five years after the date of filing, except as provided in Subsections (b)-(g). Provides that an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a certain period under certain conditions, except as provided in Subsections (e) - (g). Provides that the effectiveness of a filed financing statement lapses on the expiration of the effectiveness period unless a continuation statement is filed prior to the lapse. Provides that upon lapse, a financing statement ceases to be effective and any perfected security interest or agricultural lien becomes unperfected, unless perfected otherwise. Provides that if the security interest or agricultural lien become unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value. Authorizes a continuation statement to be filed for a certain finite period. Provides the effective period for a properly filed continuation statement, except as provided in Section 9.510. Provides that upon the expiration of a continuation statement, the financing statement lapses in the same manner as provided in Subsection (c), unless another continuation statement is filed before the lapse. Authorizes succeeding continuation statements to be filed in the same manner. Provides that the financing statement is effective until a termination statement is filed if the debtor is a transmitting utility and a filed financing statement so indicates. Provides that a record of a mortgage that is effective as a financing statement filed as a fixture filing remains effective until the mortgage is release or satisfied of record or its effectiveness otherwise terminates.

Sec. 9.516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING. Provides that communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing. Sets forth the conditions where filing does not occur with respect to a record that a filing office refuses to accept. Sets forth the conditions under which a record does not provide information or does not indicate that it is an amendment or the relating initial financing statement. Provides that a record that is communicated to the filing office with tender of the filing fee, but that the filing office refuses to accept for a reason other than one set forth in Subsection (b), is effective as a filed record except as against certain purchasers of the collateral.

Sec. 9.517. EFFECT OF INDEXING ERRORS. Provides that the failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

Sec. 9.518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD. Authorizes a person to file in the filing office a correction statement if the person believes the record is inaccurate or wrongfully filed. Requires a correction statement to include certain information. Provides that the filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Sec. 9.5185. FRAUDULENT FILING. Prohibits a person from intentionally or knowingly presenting for filing certain financing statements. Sets forth penalties for the violation of Subsection (a). Provides that a person who violates Subsection (a) may also be prosecuted under Section 37.101, Penal Code. Authorizes an owner of property covered by a fraudulent financing

statement described in Subsection (a) to file a suit in a court requesting specific relief. Provides that a successful plaintiff is entitled to reasonable attorney's fees and court costs assessed against the person who filed the fraudulent financing statement. Provides for notice by publication for an unknown defendant in a suit over a fraudulent financing statement.

Sec. 9.519. NUMBERING, MAINTAINING, AND INDEXING RECORDS; COMMUNICATING INFORMATION PROVIDED IN RECORDS. Sets forth requirements for the filing office. Sets forth requirements for file numbers assigned after January 1, 2002. Sets forth requirements for the filing office for a financing statement filed as a fixture filing or covers as-extracted collateral or timber to be cut. Requires the filing office to maintain certain capabilities. Prohibits a filing office from removing a debtor's name from the index for a certain period. Requires the filing office to perform the act required by Subsections (a)-(e) at a certain time. Provides that Subsections (b) and (h) do not apply to a filing office described in Section 9.501(a)(1).

Sec. 9.520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD. Requires a filing office to refuse to accept a record for filing for a reason set forth in Section 9.516(b) and authorizes a filing office to refuse to accept a record for filing only for a reason set forth in Section 9.516(b). Requires a filing office that refuses to accept a record for filing to communicate to the person that presented the record the fact and reason for refusal and the date and time the record would have been filed had the filing office accepted it. Requires the communication to be made at a certain time period and in a certain manner. Provides that a filed financing statement satisfying Sections 9.502(a) and (b) is effective, even if the filing office is required to refuse to accept it. Provides that Section 9.338 applies to a filed financing statement providing information described in Section 9.516(b)(5) that is incorrect at the time the financing statement is filed. Provides that this subchapter applies as to each debtor separately, if a record communicated to a filing office provides information that relates to more than one debtor.

Sec. 9.521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT. Prohibits a filing office that accepts written records to refuse to accept a written initial financing statement or record in the form and format set forth except for a reason in Section 9.516(b). Sets forth the uniform form of the written financing statement and amendment.

Sec. 9.522. MAINTENANCE AND DESTRUCTION OF RECORDS. Requires the filing office to maintain a record of the information provided in a filed financing statement for a certain period. Requires the record to be retrievable by certain information. Authorizes the filing office to immediately destroy any written record evidencing a financing statement, but requires the filing office to maintain another record of the financing statement, except to the extent other law provides otherwise.

Sec. 9.523. INFORMATION FROM FILING OFFICE; SALE OR LICENSE OF RECORDS. Requires the filing office to send certain information to a person requesting an acknowledgment of the filing. Authorizes the filing office to send a copy, furnished by the person requesting acknowledgment, with certain information. Requires the filing office to communicate to the person an acknowledgment that provides certain information, if a person files a record other than a written record. Requires the filing office to communicate or otherwise make available in a record certain information if a person requests it. Authorizes the filing office to communicate such information in any medium. Requires the filing office to communicate information by issuing its written certificate, if requested. Requires the filing office to perform the acts required by Subsections (a)-(d) at a certain time and manner. Requires the Secretary of State to offer to sell or license to the public copies of all records filed with the Secretary in every medium, at least weekly.

Sec. 9.524. DELAY BY FILING OFFICE. Sets forth the circumstances in which delay by the filing office beyond the prescribed time is excused.

Sec. 9.525. FEES. Sets the fee for filing and indexing a record under this chapter. Sets the fee for filing and indexing an initial financing statement. Provides that the number of names required to be indexed does not affect the fee in Subsections (a) and (b). Sets the fee for responding to a request for information from the filing office. Provides that this section does not require a fee with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing

or as a financing statement covering as-extracted collateral or timber to be cut. Provides that the applicable recording and satisfaction fees apply to the record of the mortgage. Sets the fee for filing, indexing, and furnishing filing data about a statement of master amendment or master assignment.

Sec. 9.526. **FILING-OFFICE RULES.** Requires the Secretary of State to adopt and publish rules to implement this chapter. Requires the filing-office rules to be consistent with this chapter. Sets forth requirements for the Secretary of State to keep the filing-office rules and practices in harmony with other filing offices in other jurisdictions.

Sec. 9.527. **DUTY TO REPORT.** Requires the Secretary of State to report to the legislature by a certain date biannually on the operation of the filing office. Requires the report to contain certain information. Deletes existing Sections 9.406 - 9.412.

SUBCHAPTER F. DEFAULT

Sec. 9.601. New heading: **RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES.** Sets forth certain actions a secured party may take after default. Provides that a secured party in possession of collateral or control of collateral under certain sections has the rights and remedies provided in Section 9.207. Provides that a debtor and an obligor have the rights provided by this subchapter and by agreement of the parties, after default. Sets forth the dates for a judgment to relate back a lien of any levy that may be made upon the collateral. Provides that this subchapter imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes. Deletes text stating under what circumstances the rules in this section may be waived or varied. Redesignates Section 9.501 as Section 9.601. Makes conforming and nonsubstantive changes.

Sec. 9.602. **WAIVER AND VARIANCE OF RIGHTS AND DUTIES.** Sets forth the rules the debtor or obligor may not waive or vary.

Sec. 9.603. **AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES.** Authorizes the parties to determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of the secured party if the standards are not manifestly unreasonable. Provides that Subsection (a) does not apply to the duty under Section 9.609 to refrain from breaching the peace.

Sec. 9.604. **PROCEDURE IF SECURITY AGREEMENT COVERS REAL PROPERTY OR FIXTURES.** Authorizes a secured party to proceed as to certain personal property and real property if a security agreement covers both personal and real property. Authorizes a secured party to proceed under this subchapter or in accordance with the rights with respect to real estate if a security agreement covers goods that are or become fixtures. Authorizes the secured party, after default, to remove the collateral from the real property if a secured party holding a security interest in fixtures has priority over all owners and encumbrances of the real property. Requires a secured party that removes collateral to promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. Provides that the secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the removal or necessity to replace the goods. Authorizes a person entitled to reimbursement to refuse permission to remove until the secured party gives adequate assurance of reimbursement.

Sec. 9.605. **UNKNOWN DEBTOR OR SECONDARY OBLIGOR.** Provides that a secured party does not owe a duty based on its status as secured party to certain people.

Sec. 9.606. **TIME OF DEFAULT FOR AGRICULTURAL LIEN.** Provides that a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Sec. 9.607. New heading: **COLLECTION AND ENFORCEMENT BY SECURED PARTY.** Authorizes a secured party, after default, or if so agreed, to notify an account debtor or other person obligated on collateral to make payment or render performance to or for the benefit of the

secured party, take entitled proceeds, enforce certain obligations, apply the balance of the deposit account to the secured obligation, and instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party. Authorizes the secured party to record in the office in which a record of the mortgage is recorded certain documents if necessary to enable a secured party to exercise under Subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially. Requires a secured party to proceed in a commercially reasonable manner in certain circumstances. Authorizes a secured party to deduct from the collections made pursuant to Subsection (c) reasonable expenses of collection and enforcement. Provides that this section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party. Deletes text concerning uncollected collateral. Redesignates Section 9.502 as Section 9.607. Makes conforming and nonsubstantive changes.

Sec. 9.608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. Sets forth the rules governing instances in which a security interest or agricultural lien secures payment or performance of an obligation. Provides that if the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. Deletes text concerning conditions in which a secured party must account to the debtor for any surplus.

Sec. 9.609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT. Authorizes a secured party to take possession of collateral, without removal to render equipment unusable, and dispose of collateral on a debtor's premises under Section 9.610, after default. Authorizes a secured party to proceed under Subsection (a) with or without judicial process, if it proceeds without breach of the peace. Redesignates Section 9.503 as Section 9.609. Makes conforming and nonsubstantive changes.

Sec. 9.610. New heading: DISPOSITION OF COLLATERAL AFTER DEFAULT. Requires every aspect of a disposition of collateral to be commercially reasonable. Authorizes a secured party to dispose of the collateral under certain procedures, if commercially reasonable. Authorizes a secured party to purchase collateral at certain dispositions. Provides that a contract for the sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like by operation of law accompany a voluntary disposition of property of the kind subject to the contract. Authorizes a secured party to disclaim or modify warranties under Subsection (d) in a certain manner. Provides that a record is sufficient to disclaim warranties under Subsection (e) if it contains certain words or words of similar import. Deletes text concerning a secured party's right to dispose of collateral after default and the effect of the disposition. Redesignates Section 9.504 as Section 9.610. Makes conforming and nonsubstantive changes.

Sec. 9.611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. Defines "notification date." Requires a secured party that disposes of collateral under Section 9.610 to send to specified persons a reasonable authenticated notification of disposition. Requires the secured party to send an authenticated notification of disposition to certain people. Provides that Subsection (b) does not apply to perishable collateral or to collateral that is of a type customarily sold on a recognized market. Sets forth the notification requirements for a secured party.

Sec. 9.612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. Provides that whether a notification is sent within a reasonable time is a question of fact. Provides that a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

Sec. 9.613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. Sets forth the rules governing the contents and form of a notification before the disposition of collateral, except in a consumer-goods transaction.

Sec. 9.614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: CONSUMER-GOODS TRANSACTION. Sets forth the rules governing the contents and form of a notification before the disposition of collateral in a consumer-goods transaction.

Sec. 9.615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. Requires a secured party to apply or pay over for application the cash proceeds of disposition in a certain order to certain expenses and obligations. Requires a holder of a subordinate security interest or other lien to furnish reasonable proof of the interest or lien within a reasonable time, if requested by a secured party. Provides that the secured party need not comply with the holder's demand under Subsection (a)(3), unless the holder provides the reasonable proof of the security interest or lien. Provides that a secured party need not apply or pay over for application noncash proceeds of disposition unless the failure to do so would be commercially unreasonable. Requires a secured party that applies or pays over for application noncash proceeds to do so in a commercially reasonable manner. Requires a secured party to account to and pay a debtor for any surplus, and the obligor is liable for any deficiency if the security interest under which a disposition is made secures payment or performance of an obligation, after making the required payments and applications. Provides that the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency if the underlying transaction is a sale of accounts, chattel paper, payment intangible, or promissory notes. Sets forth the procedure for calculating the surplus or deficiency following a disposition. Sets forth the effect of a secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of the security interest or other lien that is not subordinate to the security interest or agricultural lien.

Sec. 9.616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY. Defines "explanation" and "request." Requires the secured party to perform certain actions in a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency. Sets forth the requirements for a writing to comply with Subsection (a)(1)(B) in a certain order. Provides that a particular phrasing is not required. Provides that an explanation complying substantially with the requirements is sufficient. Provides that a debtor or consumer obligor is entitled without charge to one response to a request during any six-month period in which the secured party did not send an explanation pursuant to Subsection (b)(1). Authorizes the secured party to require payment of a charge not exceeding \$25 for each additional response.

Sec. 9.617. RIGHTS OF TRANSFEREE OF COLLATERAL. Provides that the transferee takes the collateral subject to certain rights and interest if a transferee does not take free of the rights and interests described in Subsection (a). Deletes text concerning the rights of a transferee of collateral at certain dispositions and the rights and duties for a person who is liable to a secured party under a guaranty, indorsement, or a repurchase agreement. Makes conforming and nonsubstantive changes.

Sec. 9.618. RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS. Provides that a secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor performs certain actions. Sets forth certain stipulations concerning an assignment, transfer, or subrogation described in Subsection (a).

Sec. 9.619. TRANSFER OF RECORD OR LEGAL TITLE. Defines "transfer statement." Provides that a transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system. Requires the official or office responsible for maintaining the system to perform certain actions if a transfer statement is presented with the applicable fee and request form. Provides that a transfer of the record or legal title to collateral to a secured party under Subsection (b) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties.

Sec. 9.620. New heading: ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION; COMPULSORY DISPOSITION OF COLLATERAL. Authorizes a secured party to accept collateral in full or partial satisfaction of the obligation it secures only under certain circumstances. Sets forth the circumstances in which the acceptance of collateral is effective. Sets forth the conditions under which a debtor consents to an acceptance of collateral in partial or full satisfaction of the obligation. Sets forth the date by which a notification of objection must be received by the secured party to be effective under different circumstances. Sets forth the conditions under which a secured party that has taken possession of collateral is required to dispose of the collateral pursuant to Section 9.610 within a certain time

period. Requires the secured party to dispose of the collateral by certain time periods. Prohibits a secured party to accept collateral in partial satisfaction of the obligation it secures, in a consumer transaction. Deletes text concerning compulsory disposition. Makes conforming and nonsubstantive changes.

Sec. 9.621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL. Requires a secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures to send its proposal to certain people within a certain time period. Requires a secured party that desires to accept collateral in partial satisfaction of the obligation it secures to send its proposal to any secondary obligor in addition to the persons described in Subsection (a). Makes conforming and nonsubstantive changes.

Sec. 9.622. EFFECT OF ACCEPTANCE OF COLLATERAL. Sets forth the effect of a secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures. Provides that a subordinate interest is discharged or terminated under Subsection (a), even if the secured party fails to comply with this article. Deletes text concerning required written notice of a proposal for partial or full satisfaction of the obligation by acceptance of collateral.

Sec. 9.623. New heading: RIGHT TO REDEEM COLLATERAL. Authorizes a debtor, any secondary obligor, or any other secured party or lienholder to redeem collateral. Makes conforming and nonsubstantive changes. Requires a person to tender the fulfillment of all obligations secured by the collateral and reasonable expenses and attorneys' fees, to redeem collateral. Authorizes a redemption to occur at any time before a secured party has performed certain actions. Deletes certain requirements to redeem collateral. Redesignates Section 9.506 as Section 9.623.

Sec. 9.624. WAIVER. Authorizes a debtor or secondary obligor to waive the right to notification of disposition of collateral under Section 9.611 only by an agreement to that effect entered into and authenticated after default. Authorizes a debtor to waive the right to require disposition of collateral under Section 9.620(e) only by agreement to that effect entered into and authenticated after default. Authorizes a debtor or secondary obligor to waive the right to redeem collateral under Section 9.623 only by an agreement to that effect entered into and authenticated after default, except in a consumer-goods transaction.

Sec. 9.625. New heading: REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH CHAPTER. Sets forth certain remedies a court is authorized to order for failure to comply with this chapter. Provides that person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Authorizes loss caused by a failure to comply with a request under Section 9.210 to include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing. Sets forth conditions under which certain persons may recover certain damages. Authorizes a debtor whose deficiency is eliminated under Section 9.626 to recover damages for the loss of any surplus. Prohibits a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9.626 from otherwise recovering under Subsection (b) for noncompliance with the provisions of this subchapter. Authorizes the debtor, consumer obligor, or person named as a debtor in a filed record, to recover \$500 in each case from certain people. Authorizes a debtor or consumer obligor to recover damages under Subsection (b) and \$500 in each case from a person that, without, reasonable cause, fails to comply with a request under Section 9.210. Provides that a recipient of a request under Section 9.210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply. Authorizes the secured party to claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure, if a secured party fails to comply with a request regarding a list of collateral or a statement of account. Deletes text setting forth a remedy for a debtor or any person entitled to notification for a disposition who did not receive the required notification. Redesignates Section 9.507 as Section 9.625. Makes conforming and nonsubstantive changes.

Sec. 9.626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE. Sets forth the rules governing in an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue. Provides that the limitation of the rules in Subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. Prohibits the court from inferring

from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Sec. 9.627. DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALY REASONABLE. Provides that the fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method is not of itself sufficient to preclude the secured party from establishing that the conduct was made in a commercially reasonable manner. Sets forth the requirements for a disposition of collateral to be made in a commercially reasonable manner. Sets forth the requirements for a collection, enforcement, disposition, or acceptance to be commercially reasonable. Provides that approval under Subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable. Deletes text setting forth conditions under which a disposition is conclusively deemed commercially reasonable. Makes conforming and nonsubstantive changes.

Sec. 9.628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR. Sets forth the conditions under which a secured party's liability is limited. Sets forth the conditions where a secured party is not liable because of its status as secured party. Provides that a secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on certain representations. Provides that a secured party is not liable to any person under Section 9.625(c)(2) for its failure to comply with Section 9.616, and is not liable more than once with respect to any one secured obligation.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Section 128.015(a), Agriculture Code, to make conforming changes.

SECTION 2.02. Amends Section 128.016, Agriculture Code, to make conforming changes.

SECTION 2.03. Amends Section 128.018, Agriculture Code, to make conforming changes.

SECTION 2.04. Amends Section 128.038(e), Agriculture Code, to make conforming changes.

SECTION 2.05. Amends Section 128.039(b), Agriculture Code, to make conforming changes.

SECTION 2.06. Amends Section 188.015(a), Agriculture Code, to make conforming changes.

SECTION 2.07. Amends Section 188.016, Agriculture Code, to make conforming changes.

SECTION 2.08. Amends Section 188.018, Agriculture Code, to make conforming changes.

SECTION 2.09. Amends Section 188.038(e), Agriculture Code, to make conforming changes.

SECTION 2.10. Amends Section 188.039(b), Agriculture Code, to make conforming changes.

SECTION 2.11. Amends Section 1.105(b), Business & Commerce Code, to make conforming changes.

SECTION 2.12. Amends Sections 1.201(9) and (32), Business & Commerce Code, to redefine "buyer in ordinary course of business" and "purchase," and to make conforming changes.

SECTION 2.13. Amends Section 1.201(37)(A), Business & Commerce Code, to redefine "security interest."

SECTION 2.14. Amends Section 2.103(c), Business & Commerce Code, to make conforming changes.

SECTION 2.15. Amends Sections 2.210(c)-(e), Business & Commerce Code, to make conforming changes.

SECTION 2.16. Amends Section 2.326, Business & Commerce Code, as follows:

Sec. 2.326. New heading: SALE ON APPROVAL AND SALE OR RETURN; RIGHTS OF CREDITORS. Deletes text concerning consignment sales. Makes a conforming change.

SECTION 2.17. Amends Section 2.502, Business & Commerce Code, as follows:

Sec. 2.502. New heading: BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION, FAILURE TO DELIVER, OR INSOLVENCY. Makes conforming changes.

SECTION 2.18. Amends Section 2.716(c), Business & Commerce Code, to make a conforming change.

SECTION 2.19. Amends Section 2A.103(c), Business & Commerce Code, to make conforming changes.

SECTION 2.20. Amends Section 2A.303, Business & Commerce Code, to make conforming changes.

SECTION 2.21. Amends Sections 2A.307(b)-(d), Business & Commerce Code, to make conforming changes.

SECTION 2.22. Amends Section 2A.309(a), Business & Commerce Code, to redefine "fixture filing."

SECTION 2.23. Amends Section 4.210(c), Business & Commerce Code, to make a conforming change.

SECTION 2.24. Amends Chapter 5, Business & Commerce Code, by adding Section 5.118, as follows:

Sec. 5.118. SECURITY INTEREST OF ISSUER OR NOMINATED PERSON. Sets forth requirements for an issuer or nominated person to have a security interest in a document presented under a letter of credit. Sets forth the conditions under which a security interest continues and is subject to Chapter 9, and provides the applicable exceptions to those conditions.

SECTION 2.25. Amends Section 7.503(a), Business & Commerce Code, to make a conforming change.

SECTION 2.26. Amends Section 8.103(f), Business & Commerce Code, to make a conforming change.

SECTION 2.27. Amends Sections 8.106(d) and (f), Business & Commerce Code, to make conforming changes.

SECTION 2.28. Amends Section 8.110(e), Business & Commerce Code, to make conforming changes.

SECTION 2.29. Amends Section 8.301(a), Business & Commerce Code, to make conforming changes.

SECTION 2.30. Amends Section 8.302(a), Business & Commerce Code, to make conforming changes.

SECTION 2.31. Amends Sections 8.510(a) and (c), Business & Commerce Code, to set forth the priority for a purchaser for value of a security entitlement, in a case not covered by Chapter 9.

SECTION 2.32. Amends Section 221.032, Health and Safety Code, to make a conforming change.

SECTION 2.33. Amends Section 31.053(d), Parks and Wildlife Code, to make a conforming change.

SECTION 2.34. Amends Section 14.004(a), Property Code, to make a conforming change.

SECTION 2.35. Amends Section 24.0062(j), Property Code, to make conforming changes.

SECTION 2.36. Amends Section 42.002(b), Property Code, to make a conforming change.

SECTION 2.37. Amends Sections 61.001(2) and (3), Property Code, to make conforming changes.

SECTION 2.38. Amends Section 70.001(b), Property Code, to make a conforming change.

SECTION 2.39. Amends Section 70.003(d)(1), Property Code, to make a conforming change.

SECTION 2.40. Amends Section 70.005(c), Property Code, to make a conforming change.

SECTION 2.41. Amends Section 70.302(b), Property Code, to make a conforming change.

SECTION 2.42. Amends Section 501.002(9), Transportation Code, to make a conforming change.

SECTION 2.43. Amends Section 4.053, Article 717s, V.T.C.S. (Public Facility Corporation Act), to make a conforming change.

SECTION 2.44. Amends Sections 19(a)(1), (5), (10), and (12), Article 5221f, V.T.C.S. (Texas Manufactured Housing Standards Act), to make conforming changes.

SECTION 2.45. Amends Section 19(n), Article 5221f, V.T.C.S., to make a conforming change.

ARTICLE 3. EFFECTIVE DATE; TRANSITION; EMERGENCY

SECTION 3.01. Effective date: July 1, 2001.

SECTION 3.02. SAVING CLAUSE. Provides that this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this Act takes effect. Makes application of this Act prospective regarding transactions and liens. Provides that this Act does not affect an action, case, or proceeding commenced before the effective date of this Act.

SECTION 3.03. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. Sets forth the conditions under which a security interest that is enforceable immediately before the effective date of this Act and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest. Sets forth the status of a security interest that is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under Chapter 9, Business & Commerce Code, are not satisfied when this Act takes effect.

SECTION 3.04. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. Sets forth the conditions under which a security interest that is enforceable immediately before the effective date of this Act but would be subordinate to the rights of a person that becomes a lien creditor at that time is enforceable or becomes a perfected security interest.

SECTION 3.05. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. Provides that if action, other than the filing of a financing statement is taken before the effective date of this Act and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this Act takes effect, the action is effective to perfect a security interest that attaches under Chapter 9, Business & Commerce Code, within one year after the effective date of this Act. Provides that the filing of a financing statement before the effective date of this Act is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Chapter 9, Business & Commerce Code, as amended. Provides that this Act does not render ineffective an effective financing statement that, before the effective date of this Act, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as it existed immediately before the effective date of this Act. Provides that the financing statement ceases to be effective at a certain date. Provides that the filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. Provides that upon the timely filing of a continuation statement after this Act takes effect and in accordance with the law of the jurisdiction governing perfection the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction. Provides that Subsection (c)(2) of this section applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as it existed immediately before the effective date of this Act to a certain extent. Sets forth the extent to which a financing statement that includes a financing statement filed before this Act takes effect and a continuation statement filed after this Act takes effect is effective.

SECTION 3.06. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. Sets forth the conditions in which the filing of an

initial financing statement in a certain office continues the effectiveness of a financing statement filed before this Act takes effect. Sets forth the conditions under which the filing of an initial financing statement under Subsection (a) continues the effectiveness of the pre-effective-date financing statement. Requires the initial financing statement to satisfy certain requirements and contain certain information to be effective for the purposes of Subsection (a).

SECTION 3.07. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. Authorizes a person to file an initial financing statement or a continuation statement under certain conditions.

SECTION 3.08. PRIORITY. Makes application of this Act prospective regarding the priority of conflicting claims to collateral.

SECTION 3.09. REPORT TO LEGISLATURE. Requires the secretary of state to file the initial report under Section 9.527, Business & Commerce Code, by January 1, 2003.

SECTION 3.10. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.01.

Amends Section 9.109, Business & Commerce Code, to provide that this chapter does not apply to certain liens, assignments, sales, transfers, right of recoupments or set-offs, the creation or transfer of certain interests, the interest of a vendor or vendee in a contract for deed to purchase an interest in real property, or the interest of an optioner or optionee in an option to purchase an interest in real property.