STATE OF NEW YORK

8346

2017-2018 Regular Sessions

IN ASSEMBLY

June 9, 2017

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the uniform commercial code, the civil practice law and rules, the lien law, the general obligations law, the banking law, the general business law, the arts and cultural affairs law and the personal property law, in relation to making technical corrections to conform with revisions to the uniform commercial code

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (g) of subsection 1 of section 4-A-105 of the uniform commercial code, as added by chapter 208 of the laws of 1990, is amended to read as follows:

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (subsection **(b)**(8) of section [~~1-201~~] **1--201**).

§ 2. Subsection 1 of section 4-A-106 of the uniform commercial code, as added by chapter 208 of the laws of 1990, is amended to read as follows:

(1) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in [~~subsection (27) of~~] Section [~~1-201~~] **1--202**. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

§ 3. Subsection 2 of section 4-A-204 of the uniform commercial code, as added by chapter 208 of the laws of 1990, is amended to read as follows:

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in subsection [~~(1)~~] (b) of Section [~~1-204~~] 1--302, but the obligation of a receiving bank to refund payment as stated in subsection [~~(1)~~] (b) may not otherwise be varied by agreement.

§ 4. Subsection (c) of section 5--103 of the uniform commercial code, as added by chapter 471 of the laws of 2000, is amended to read as follows:

(c) With the exception of this subsection, subsections (a) and (d) of this section, paragraphs (9) and (10) of subsection (a) of section 5--102, subsection (d) of section 5--106, and subsection (d) of section 5--114, and except to the extent prohibited in [~~subsection (3) of~~] section [~~1--102~~] 1--302 and subsection (d) of section 5--117, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

§ 5. Subdivision (c) of rule 4518 of the civil practice law and rules, as amended by chapter 170 of the laws of 1994, is amended to read as follows:

(c) Other records. All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician. Where a hospital record is in the custody of a warehouse[~~, or "warehouseman"~~] as that term is defined by paragraph [~~(h) of subdivision one~~] thirteen of subsection (a) of section [~~7-102~~] 7--102 of the uniform commercial code, pursuant to a plan approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the commissioner, or order or resolution of the governing body or official of the hospital, and (ii) that the record has been in the exclusive custody of such warehouse [~~or warehousemen~~] since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any [~~warehouseman~~] warehouse providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and the [~~warehouseman~~] warehouse is authorized to assess and collect a reasonable charge for providing the certification described by this subdivision.

§ 6. Section 200 of the lien law, as amended by chapter 30 of the laws of 1968, is amended to read as follows:

§ 200. Sale of personal property to satisfy a lien. A lien against personal property, other than the lien of a [~~warehouseman~~] warehouse pursuant to section 7--209 of the uniform commercial code, the lien of a carrier pursuant to section 7--307 of the uniform commercial code, a security interest in goods and the lien of a keeper of a hotel, apartment hotel, inn, boarding-house or lodging-house, except an immigrant lodging-house, if in the legal possession of the lienor, may be satisfied by the sale of such property according to the provisions of this article.

§ 7. Subdivision 1 of section 5-1401 of the general obligations law, as added by chapter 421 of the laws of 1984, is amended to read as follows:

1. The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection [~~one~~] (a) of section [~~1-105~~] 1--301 of the uniform commercial code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services, (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection [~~two~~] (c) of section [~~1-105~~] 1--301 of the uniform commercial code.

§ 8. Subdivision 1-c of section 7-101 of the general obligations law, as amended by chapter 84 of the laws of 2001, is amended to read as follows:

1-c. This section shall apply to money deposited or advanced on contracts for the use or rental of personal property as security for performance of the contract or to be applied to payments upon such contract when due, only if (a) such contract is governed by the laws of this state as the result of a choice of law provision in such contract, in accordance with section [~~1-105~~] 1--301 of the uniform commercial code (subject to the limitations on choice of law by the parties to a consumer lease under section 2-A-106 of the uniform commercial code), or such contract is otherwise governed by the laws of this state in accordance with applicable conflict of laws rules, and (b) the lessee under such contract is located within this state, within the meaning of the uniform commercial code (with respect to the location of debtors), except that a foreign air carrier under the Federal Aviation Act of 1958, as amended, shall not be deemed located in this state solely as a result of having a designated office of an agent upon whom service of process may be made located in this state.

§ 9. Subdivisions 1 and 2 of section 138 of the banking law, as amended by chapter 689 of the laws of 1984, are amended to read as follows:

1. Notwithstanding section [~~1-105~~] 1--301 of the uniform commercial code, any bank or trust company or national bank located in this state which in accordance with the provisions of this chapter or otherwise applicable law shall have opened and occupied a branch office or branch offices in any foreign country shall be liable for contracts to be performed at such branch office or offices and for deposits to be repaid at such branch office or offices to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws. The laws of such foreign country for the purpose of this section shall be deemed to include all acts, decrees, regulations and orders promulgated or enforced by a dominant authority asserting governmental, military or police power of any kind at the

place where any such branch office is located, whether or not such dominant authority be recognized as a de facto or de jure government.

2. Notwithstanding section [~~1-105~~] **1--301** of the uniform commercial code, if by action of any such dominant authority which is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in such foreign territory and carried as an asset of any branch office of such bank or trust company or national bank in such foreign territory is seized, destroyed or cancelled, then the liability of such bank or trust company or national bank for any deposit theretofore received and thereafter to be repaid by it, and for any contract theretofore made and thereafter to be performed by it, at any branch office in such foreign territory shall be reduced pro tanto by the proportion that the value (as shown by the books or other records of such bank or trust company or national bank at the time of such seizure, destruction or cancellation) of such assets bears to the aggregate of all the deposit and contract liabilities of the branch office or offices of such bank or trust company or national bank in such foreign territory, as shown at such time by the books or other records of such bank or trust company or national bank.

§ 10. Paragraphs (a) and (b) of subdivision 3 of section 204-a of the banking law, as amended by chapter 552 of the laws of 1962, are amended to read as follows:

(a) Notwithstanding section [~~1-105~~] **1--301** of the uniform commercial code, any foreign banking corporation doing business in this state under a license issued by the superintendent in accordance with the provisions of this chapter shall be liable in this state for contracts to be performed at its office or offices in any foreign country, and for deposits to be repaid at such office or offices, to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws. The laws of such foreign country for the purpose of this subdivision shall be deemed to include all acts, decrees, regulations and orders promulgated or enforced by a dominant authority asserting governmental, military or police power of any kind at the place where any such office is located, whether or not such dominant authority be recognized as a de facto or de jure government.

(b) Notwithstanding section [~~1-105~~] **1--301** of the uniform commercial code, if by action of any such dominant authority which is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in such foreign territory and carried as an asset of any office of such foreign banking corporation in such foreign territory is seized, destroyed or cancelled, then the liability, if any, in this state of such foreign banking corporation for any deposit theretofore received and thereafter to be repaid by it, and for any contract theretofore made and thereafter to be performed by it, at any office in such foreign territory shall be reduced pro tanto by the proportion that the value (as shown by the books or other records of such foreign banking corporation, at the time of such seizure, destruction or cancellation) of such assets bears to the aggregate of all the deposit and contract liabilities of the office or offices of such foreign banking corporation in such foreign territory, as shown at such time by the books or other records of such foreign banking corporations. Nothing contained in this paragraph shall diminish or otherwise affect the liability of any such foreign banking corporation to any corporation, firm or individual which at the time of such seizure, destruction or cancellation was incorporated or resident in any state of the United States.

§ 11. Subdivision 4 of section 11.01 of the arts and cultural affairs law, as added by chapter 849 of the laws of 1984, is amended to read as follows:

4. "Creditors" means "creditor" as defined in [~~subdivision twelve~~] **paragraph thirteen** of **subsection (b) of** section [~~1-201~~] **1--201** of the uniform [~~commerical~~] **commercial** code.

§ 12. Subdivision 5 of section 331 of the personal property law, as added by chapter 1 of the laws of 1994, is amended to read as follows:

5. "Retail lease agreement" or "agreement" means an agreement, entered into in this state, for the lease of a motor vehicle, and which may include the purchase of goods or services incidental thereto, by a retail lessee for a scheduled term exceeding four months, whether or not the lessee has the option to purchase or otherwise become the owner of the vehicle at the expiration of the agreement. The term includes such an agreement wherever entered into if executed by the lessee in this state and if solicited in person by a person acting on his own behalf or that of the lessor. The term does not include a retail instalment contract or a rental-purchase agreement as defined in articles nine and eleven of this chapter. An agreement that substantially complies with this article does not create a security interest in a motor vehicle as the term "security interest" is defined in [~~subdivision thirty-seven~~] **paragraph thirty-five** of **subsection (b) of** section [~~1-201~~] **1--201** of the uniform commercial code.

§ 13. Paragraph (e) of subdivision 7 of section 399-w of the general business law, as amended by chapter 140 of the laws of 1995, is amended to read as follows:

(e) "Retail lease agreement" or "agreement" means an agreement, entered into in this state, for the lease of goods and which may include the purchase of goods or services incidental thereto by a lessee for a scheduled term exceeding four months, whether or not the lessee has the option to purchase or otherwise become the owner of the goods at the expiration of the agreement. The term includes such an agreement wherever entered into if executed by the lessee in this state and if solicited in person by a person acting on his or her own behalf or that of the lessor. The term does not include a retail instalment contract or a rental-purchase agreement as defined in articles ten and eleven of the personal property law. An agreement that substantially complies with this article does not create a security interest in the goods as the term "security interest" is defined in [~~subdivision thirty-seven~~] **paragraph thirty-five** of **subsection (b) of** section [~~1-201~~] **1--201** of the uniform commercial code.

§ 14. Subdivision 6 of section 500 of the personal property law, as amended by chapter 309 of the laws of 2010, is amended to read as follows:

6. "Rental-purchase agreement" means an agreement for the use of merchandise by a consumer for primarily personal, family, or household purposes, for an initial period of four months or less, that is renewable with each payment after the initial period and that permits the consumer to become the owner of the property. An agreement that complies with this article is not a retail installment sales contract, agreement, or obligation as defined in this chapter nor a security interest as defined in [~~subdivision thirty-seven~~] **paragraph thirty-five** of **subsection (b) of** section [~~1-201~~] **1--201** of the uniform commercial code.

§ 15. This act shall take effect immediately.