

8007

I N S E N A T E

June 3, 2016

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed 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:

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

4 (g) "Prove" with respect to a fact means to meet the burden of estab-
5 lishing the fact (subsection (B)(8) of section [1-201] 1--201).

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

9 (1) The time of receipt of a payment order or communication cancelling
10 or amending a payment order is determined by the rules applicable to
11 receipt of a notice stated in [subsection (27) of] Section [1-201]
12 1--202. A receiving bank may fix a cut-off time or times on a funds-
13 transfer business day for the receipt and processing of payment orders
14 and communications cancelling or amending payment orders. Different
15 cut-off times may apply to payment orders, cancellations, or amendments,
16 or to different categories of payment orders, cancellations, or amend-
17 ments. A cut-off time may apply to senders generally or different cut-
18 off times may apply to different senders or categories of payment
19 orders. If a payment order or communication cancelling or amending a
20 payment order is received after the close of a funds-transfer business
21 day or after the appropriate cut-off time on a funds-transfer business
22 day, the receiving bank may treat the payment order or communication as
23 received at the opening of the next funds-transfer business day.

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

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

4 (2) Reasonable time under subsection (1) may be fixed by agreement as
5 stated in subsection [(1)] (B) of Section [1-204] 1--302, but the obli-
6 gation of a receiving bank to refund payment as stated in subsection
7 [(1)] (B) may not otherwise be varied by agreement.

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

11 (c) With the exception of this subsection, subsections (a) and (d) of
12 this section, paragraphs (9) and (10) of subsection (a) of section
13 5--102, subsection (d) of section 5--106, and subsection (d) of section
14 5--114, and except to the extent prohibited in [subsection (3) of]
15 section [1--102] 1--302 and subsection (d) of section 5--117, the effect
16 of this article may be varied by agreement or by a provision stated or
17 incorporated by reference in an undertaking. A term in an agreement or
18 undertaking generally excusing liability or generally limiting remedies
19 for failure to perform obligations is not sufficient to vary obligations
20 prescribed by this article.

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

24 (c) Other records. All records, writings and other things referred to
25 in sections 2306 and 2307 are admissible in evidence under this rule and
26 are prima facie evidence of the facts contained, provided they bear a
27 certification or authentication by the head of the hospital, laboratory,
28 department or bureau of a municipal corporation or of the state, or by
29 an employee delegated for that purpose or by a qualified physician.
30 Where a hospital record is in the custody of a warehouse[, or "ware-
31 houseman"] as that term is defined by paragraph [(h) of subdivision one]
32 THIRTEEN OF SUBSECTION (A) of section [7-102] 7--102 of the uniform
33 commercial code, pursuant to a plan approved in writing by the state
34 commissioner of health, admissibility under this subdivision may be
35 established by a certification made by the manager of the warehouse that
36 sets forth (i) the authority by which the record is held, including but
37 not limited to a court order, order of the commissioner, or order or
38 resolution of the governing body or official of the hospital, and (ii)
39 that the record has been in the exclusive custody of such warehouse [or
40 warehousemen] since its receipt from the hospital or, if another has had
41 access to it, the name and address of such person and the date on which
42 and the circumstances under which such access was had. Any [warehouse-
43 man] WAREHOUSE providing a certification as required by this subdivision
44 shall have no liability for acts or omissions relating thereto, except
45 for intentional misconduct, and the [warehouseman] WAREHOUSE is author-
46 ized to assess and collect a reasonable charge for providing the certif-
47 ication described by this subdivision.

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

50 S 200. Sale of personal property to satisfy a lien. A lien against
51 personal property, other than the lien of a [warehouseman] WAREHOUSE
52 pursuant to section 7--209 of the uniform commercial code, the lien of a
53 carrier pursuant to section 7--307 of the uniform commercial code, a
54 security interest in goods and the lien of a keeper of a hotel, apart-
55 ment hotel, inn, boarding-house or lodging-house, except an immigrant
56 lodging-house, if in the legal possession of the lienor, may be satis-

1 filed by the sale of such property according to the provisions of this
2 article.

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

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

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

22 1-c. This section shall apply to money deposited or advanced on
23 contracts for the use or rental of personal property as security for
24 performance of the contract or to be applied to payments upon such
25 contract when due, only if (a) such contract is governed by the laws of
26 this state as the result of a choice of law provision in such contract,
27 in accordance with section [1-105] 1--301 of the uniform commercial code
28 (subject to the limitations on choice of law by the parties to a consum-
29 er lease under section 2-A-106 of the uniform commercial code), or such
30 contract is otherwise governed by the laws of this state in accordance
31 with applicable conflict of laws rules, and (b) the lessee under such
32 contract is located within this state, within the meaning of the uniform
33 commercial code (with respect to the location of debtors), except that a
34 foreign air carrier under the Federal Aviation Act of 1958, as amended,
35 shall not be deemed located in this state solely as a result of having a
36 designated office of an agent upon whom service of process may be made
37 located in this state.

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

41 1. Notwithstanding section [1-105] 1--301 of the uniform commercial
42 code, any bank or trust company or national bank located in this state
43 which in accordance with the provisions of this chapter or otherwise
44 applicable law shall have opened and occupied a branch office or branch
45 offices in any foreign country shall be liable for contracts to be
46 performed at such branch office or offices and for deposits to be repaid
47 at such branch office or offices to no greater extent than a bank, bank-
48 ing corporation or other organization or association for banking
49 purposes organized and existing under the laws of such foreign country
50 would be liable under its laws. The laws of such foreign country for the
51 purpose of this section shall be deemed to include all acts, decrees,
52 regulations and orders promulgated or enforced by a dominant authority
53 asserting governmental, military or police power of any kind at the
54 place where any such branch office is located, whether or not such domi-
55 nant authority be recognized as a de facto or de jure government.

1 2. Notwithstanding section [1-105] 1--301 of the uniform commercial
2 code, if by action of any such dominant authority which is not recog-
3 nized by the United States as the de jure government of the foreign
4 territory concerned, any property situated in or any amount to be
5 received in such foreign territory and carried as an asset of any branch
6 office of such bank or trust company or national bank in such foreign
7 territory is seized, destroyed or cancelled, then the liability of such
8 bank or trust company or national bank for any deposit theretofore
9 received and thereafter to be repaid by it, and for any contract there-
10 tofore made and thereafter to be performed by it, at any branch office
11 in such foreign territory shall be reduced pro tanto by the proportion
12 that the value (as shown by the books or other records of such bank or
13 trust company or national bank at the time of such seizure, destruction
14 or cancellation) of such assets bears to the aggregate of all the depos-
15 it and contract liabilities of the branch office or offices of such bank
16 or trust company or national bank in such foreign territory, as shown at
17 such time by the books or other records of such bank or trust company or
18 national bank.

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

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

37 (b) Notwithstanding section [1-105] 1--301 of the uniform commercial
38 code, if by action of any such dominant authority which is not recog-
39 nized by the United States as the de jure government of the foreign
40 territory concerned, any property situated in or any amount to be
41 received in such foreign territory and carried as an asset of any office
42 of such foreign banking corporation in such foreign territory is seized,
43 destroyed or cancelled, then the liability, if any, in this state of
44 such foreign banking corporation for any deposit theretofore received
45 and thereafter to be repaid by it, and for any contract theretofore made
46 and thereafter to be performed by it, at any office in such foreign
47 territory shall be reduced pro tanto by the proportion that the value
48 (as shown by the books or other records of such foreign banking corpo-
49 ration, at the time of such seizure, destruction or cancellation) of
50 such assets bears to the aggregate of all the deposit and contract
51 liabilities of the office or offices of such foreign banking corporation
52 in such foreign territory, as shown at such time by the books or other
53 records of such foreign banking corporations. Nothing contained in this
54 paragraph shall diminish or otherwise affect the liability of any such
55 foreign banking corporation to any corporation, firm or individual which

1 at the time of such seizure, destruction or cancellation was incorpo-
2 rated or resident in any state of the United States.

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

6 4. "Creditors" means "creditor" as defined in [subdivision twelve]
7 PARAGRAPH THIRTEEN of SUBSECTION (B) OF section [1-201] 1--201 of the
8 uniform [commerical] COMMERCIAL code.

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

11 5. "Retail lease agreement" or "agreement" means an agreement, entered
12 into in this state, for the lease of a motor vehicle, and which may
13 include the purchase of goods or services incidental thereto, by a
14 retail lessee for a scheduled term exceeding four months, whether or not
15 the lessee has the option to purchase or otherwise become the owner of
16 the vehicle at the expiration of the agreement. The term includes such
17 an agreement wherever entered into if executed by the lessee in this
18 state and if solicited in person by a person acting on his own behalf or
19 that of the lessor. The term does not include a retail instalment
20 contract or a rental-purchase agreement as defined in articles nine and
21 eleven of this chapter. An agreement that substantially complies with
22 this article does not create a security interest in a motor vehicle as
23 the term "security interest" is defined in [subdivision thirty-seven]
24 PARAGRAPH THIRTY-FIVE of SUBSECTION (B) OF section [1-201] 1--201 of the
25 uniform commercial code.

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

29 (e) "Retail lease agreement" or "agreement" means an agreement,
30 entered into in this state, for the lease of goods and which may include
31 the purchase of goods or services incidental thereto by a lessee for a
32 scheduled term exceeding four months, whether or not the lessee has the
33 option to purchase or otherwise become the owner of the goods at the
34 expiration of the agreement. The term includes such an agreement wherev-
35 er entered into if executed by the lessee in this state and if solicited
36 in person by a person acting on his or her own behalf or that of the
37 lessor. The term does not include a retail instalment contract or a
38 rental-purchase agreement as defined in articles ten and eleven of the
39 personal property law. An agreement that substantially complies with
40 this article does not create a security interest in the goods as the
41 term "security interest" is defined in [subdivision thirty-seven] PARA-
42 GRAPH THIRTY-FIVE of SUBSECTION (B) OF section [1-201] 1--201 of the
43 uniform commercial code.

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

47 6. "Rental-purchase agreement" means an agreement for the use of
48 merchandise by a consumer for primarily personal, family, or household
49 purposes, for an initial period of four months or less, that is renewa-
50 ble with each payment after the initial period and that permits the
51 consumer to become the owner of the property. An agreement that complies
52 with this article is not a retail installment sales contract, agreement,
53 or obligation as defined in this chapter nor a security interest as
54 defined in [subdivision thirty-seven] PARAGRAPH THIRTY-FIVE of
55 SUBSECTION (B) OF section [1-201] 1--201 of the uniform commercial code.

56 S 15. This act shall take effect immediately.