

# STATE OF NEW YORK

9564

## IN ASSEMBLY

January 23, 2018

Introduced by M. of A. DINOWITZ -- 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 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 obli-

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

LBD14138-01-8

gation 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 229 of the laws of 2017, 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 "ware-~~ ~~houseman"~~ as that term is defined by paragraph (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. Where a hospital record is located in a jurisdiction other than this state, admissibility under this subdivision may be established by either 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.

§ 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 satis-

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

3 § 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 § 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 § 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.

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

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

3 § 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 [~~commercial~~] commercial code.

9 § 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 § 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 § 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 § 15. This act shall take effect immediately.