

# STATE OF NEW YORK

---

6179--A

2017-2018 Regular Sessions

## IN SENATE

May 11, 2017

---

Introduced by Sens. BONACIC, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD11645-02-8

1 payment order is received after the close of a funds-transfer business  
2 day or after the appropriate cut-off time on a funds-transfer business  
3 day, the receiving bank may treat the payment order or communication as  
4 received at the opening of the next funds-transfer business day.

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

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

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

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

25 § 5. Subdivision (c) of rule 4518 of the civil practice law and rules,  
26 as amended by chapter 229 of the laws of 2017, is amended to read as  
27 follows:

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

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

3 § 200. Sale of personal property to satisfy a lien. A lien against  
4 personal property, other than the lien of a ~~warehouseman~~ warehouse  
5 pursuant to section 7--209 of the uniform commercial code, the lien of a  
6 carrier pursuant to section 7--307 of the uniform commercial code, a  
7 security interest in goods and the lien of a keeper of a hotel, apart-  
8 ment hotel, inn, boarding-house or lodging-house, except an immigrant  
9 lodging-house, if in the legal possession of the lienor, may be satis-  
10 fied by the sale of such property according to the provisions of this  
11 article.

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

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

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

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

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

50 1. Notwithstanding section ~~[1-105]~~ 1--301 of the uniform commercial  
51 code, any bank or trust company or national bank located in this state  
52 which in accordance with the provisions of this chapter or otherwise  
53 applicable law shall have opened and occupied a branch office or branch  
54 offices in any foreign country shall be liable for contracts to be  
55 performed at such branch office or offices and for deposits to be repaid  
56 at such branch office or offices to no greater extent than a bank, bank-

ing 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 corpo-

ration, 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 [~~commercial~~] 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 renewa-

1 ble with each payment after the initial period and that permits the  
2 consumer to become the owner of the property. An agreement that complies  
3 with this article is not a retail installment sales contract, agreement,  
4 or obligation as defined in this chapter nor a security interest as  
5 defined in [~~subdivision thirty-seven~~] paragraph thirty-five of  
6 subsection (b) of section [~~1-201~~] 1--201 of the uniform commercial code.  
7 § 15. This act shall take effect immediately.