

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-336
HOUSE BILL 646

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO ESTABLISH A
PRODUCTION MONEY SECURITY INTEREST IN CROPS THAT HAS
PRIORITY OVER OTHER SECURITY INTERESTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-312 reads as rewritten:

"§ 25-9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on consignments.

- (2) (a) A perfected security interest in crops for new value given to enable the debtor to purchase agricultural supplies to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier any perfected security interest in those crops, to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest. Priority between conflicting security interests in crops for new value given to enable the debtor to purchase agricultural supplies not more than three months before the crops became growing crops is governed by subdivision (5) of this section.
- (b) Within five days of perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies, the holder of the security interest shall notify in writing by certified mail, addressee only, the holder of the conflicting security interest that the person giving the notice has or expects to acquire a security interest in the crops of the debtor. The notice shall identify the debtor, describe the type of crops, state the year or years in which the crops will be grown, and describe the land where the crops are growing or to be grown.
- (c) Creating or perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies shall not operate

under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security arrangement of any kind or nature where the collateral is real or personal property.

- (d) As used in this subdivision, 'agricultural supplies' includes agricultural seeds as defined in G.S. 106-277.2, soil additives as defined in G.S. 106-50.31, fertilizer materials as defined in G.S. 106-657, liming materials as defined in G.S. 106-92.3, pesticides as defined in G.S. 106-65.24, herbicides as defined in G.S. 143-460, and curing oil and gas.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

- (a) ~~the~~ The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) ~~the~~ The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of G.S. 25-9-304); and
- (c) ~~the~~ The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (d) ~~the~~ The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

- (a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.
- (b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 2. This act becomes effective October 1, 1997, and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date.

In the General Assembly read three times and ratified this the 16th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 11:00 a.m. this 25th day of July, 1997