

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

907E0433

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 107 - 02/22/2001

Introduced by: Senators Munson, de Hueck, Everist, Volesky, and Whiting and
Representatives Michels, Brown (Jarvis), and McCaulley

1 FOR AN ACT ENTITLED, An Act to revise and update certain provisions of the Uniform
2 Commercial Code.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That subsection (67) of subdivision (a) of § 57A-9-102 be amended to read as
5 follows:

6 (67) "Public-finance transaction" means a secured transaction in connection with which:

7 (A) Debt or other securities are issued; and

8 (B) ~~All or a portion of the securities issued have an initial stated maturity of at least~~
9 ~~20 years; and~~

10 ~~—————~~(C) The debtor, obligor, secured party, account debtor or other person obligated
11 on collateral, assignor or assignee of a secured obligation, or assignor or
12 assignee of a security interest is a State or a governmental unit of a State.

13 Section 2. That § 57A-9-109 be amended to read as follows:

14 57A-9-109. (a) Except as otherwise provided in subsections (c) and (d), this chapter applies

1 to:

2 (1) A transaction, regardless of its form, that creates a security interest in personal
3 property or fixtures by contract;

4 (2) An agricultural lien;

5 (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

6 (4) A consignment;

7 (5) A security interest arising under § 57A-2-401, 57A-2-505, 57A-2-711(3), or
8 57A-2A-508(5), as provided in § 57A-9-110; and

9 (6) A security interest arising under § 57A-4-210 or 5-118.

10 (b) The application of this chapter to a security interest in a secured obligation is not affected
11 by the fact that the obligation is itself secured by a transaction or interest to which this chapter
12 does not apply.

13 (c) This chapter does not apply to the extent that:

14 (1) A statute, regulation, or treaty of the United States preempts this chapter;

15 (2) Another statute of this state expressly governs the creation, perfection, priority, or
16 enforcement of a security interest created by this state or a governmental unit of this
17 state;

18 (3) A statute of another state, a foreign country, or a governmental unit of another state
19 or a foreign country, other than a statute generally applicable to security interests,
20 expressly governs creation, perfection, priority, or enforcement of a security interest
21 created by the state, country, or governmental unit; or

22 (4) The rights of a transferee beneficiary or nominated person under a letter of credit are
23 independent and superior under § 57A-5-114.

24 (d) This chapter does not apply to:

- 1 (1) A landlord's lien, other than an agricultural lien;
- 2 (2) A lien, other than an agricultural lien, given by statute or other rule of law for services
3 or materials, but § 57A-9-333 applies with respect to priority of the lien;
- 4 (3) An assignment of a claim for wages, salary, or other compensation of an employee;
- 5 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of
6 a sale of the business out of which they arose;
- 7 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes
8 which is for the purpose of collection only;
- 9 (6) An assignment of a right to payment under a contract to an assignee that is also
10 obligated to perform under the contract;
- 11 (7) An assignment of a single account, payment intangible, or promissory note to an
12 assignee in full or partial satisfaction of a preexisting indebtedness;
- 13 (8) A transfer of an interest in or an assignment of a claim under a policy of insurance,
14 other than an assignment by or to a health-care provider of a health-care-insurance
15 receivable and any subsequent assignment of the right to payment, but §§ 57A-9-315
16 and 57A-9-322 apply with respect to proceeds and priorities in proceeds;
- 17 (9) An assignment of a right represented by a judgment, other than a judgment taken on
18 a right to payment that was collateral;
- 19 (10) A right of recoupment or set-off, but:
 - 20 (A) Section 57A-9-340 applies with respect to the effectiveness of rights of
21 recoupment or set-off against deposit accounts; and
 - 22 (B) Section 57A-9-404 applies with respect to defenses or claims of an account
23 debtor;
- 24 (11) The creation or transfer of an interest in or lien on real property, including a lease or

1 rents thereunder, except to the extent that provision is made for:

2 (A) Liens on real property in §§ 57A-9-203 and 57A-9-308;

3 (B) Fixtures in § 57A-9-334;

4 (C) Fixture filings in §§ 57A-9-501, 57A-9-502, 57A-9-512, 57A-9-516, and
5 57A-9-519; and

6 (D) Security agreements covering personal and real property in § 57A-9-604;

7 (12) An assignment of a claim arising in tort, other than a commercial tort claim, but
8 §§ 57A-9-315 and 57A-9-322 apply with respect to proceeds and priorities in
9 proceeds;

10 (13) A transfer or security interest made or created by a state or any governmental unit;

11 (14) An assignment of a deposit account in a consumer transaction, but §§ 57A-9-315 and
12 57A-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~

13 ~~(14)~~(15) The pledging or segregating of collateral for public deposits as authorized by
14 § 51-22-12, chapter 52-5, and chapter 4-6A;

15 (16) An assignment of a claim or right to receive compensation for injuries or sickness as
16 described in 26 U.S.C. § 104(a)(1) or (2), as amended to January 1, 2001; or

17 (17) An assignment of a claim or right to receive benefits under a special needs trust as
18 described in 42 U.S.C. § 1396p(d)(4), as amended to January 1, 2001.

19 Section 3. That § 57A-9-515 be amended to read as follows:

20 57A-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed
21 financing statement is effective for a period of five years after the date of filing. Financing
22 statements filed before July 1, 1997, are effective for a period of five years from the date of filing
23 and thereafter for a period of 60 days.

24 The expiration date established by a financing statement filed prior to July 1, 1997, whether

1 or not continued by a continuation statement shall remain in full force and effect and is not
2 diminished by any subsequent amendments to this chapter.

3 (b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement
4 filed in connection with a ~~public-finance transaction or manufactured-home transaction~~ is effective
5 for a period of 30 years after the date of filing if it indicates that it is filed in connection with a
6 ~~public-finance transaction or manufactured-home transaction~~.

7 (c) The effectiveness of a filed financing statement lapses on the expiration of the period of
8 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection

9 (d). Upon lapse, a financing statement ceases to be effective and any security interest or
10 agricultural lien that was perfected by the financing statement becomes unperfected, unless the
11 security interest is perfected otherwise. If the security interest or agricultural lien becomes
12 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the
13 collateral for value.

14 (d) A continuation statement may be filed only within six months before the expiration of the
15 five-year period specified in subsection (a) or the 30-year period specified in subsection (b),
16 whichever is applicable.

17 However, for financing statements filed before July 1, 1997, a continuation statement may be
18 filed within six months before and 60 days after the expiration of the five-year period.

19 (e) Except as otherwise provided in § 57A-9-510, upon timely filing of a continuation
20 statement, the effectiveness of the initial financing statement continues for a period of five years
21 and, for initial financing statements filed before July 1, 1997, the effectiveness of the initial
22 financing statement continues for a period of five years and sixty days, commencing on the day
23 on which the financing statement would have become ineffective in the absence of the filing. Upon
24 the expiration of the five-year period, the financing statement lapses in the same manner as

1 provided in subsection (c), unless, before the lapse, another continuation statement is filed
2 pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner
3 to continue the effectiveness of the initial financing statement.

4 (f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing
5 statement is effective until a termination statement is filed.

6 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing
7 under § 57A-9-502(c) remains effective as a financing statement filed as a fixture filing until the
8 mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real
9 property.