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CHAPTER 11

Effective Date and Transition Provisions for the 1981 Uniform Commercial Code Amendments

**SECTION 36‑11‑101.** Effective date of the 1988 amendments.

The amendments to Title 36 contained in this chapter become effective at 12:01 a.m. on January 1, 1989. The amendments to Title 36 contained in this chapter are officially designated as the 1988 UCC amendments; and the provisions of Act 1065 of 1966 are officially designated as the 1966 UCC.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑102.** Preservation of old transition procedures.

Except as otherwise provided in Section 36‑11‑106(4), the provisions of Section 36‑10‑102 shall continue to apply to the 1988 UCC Amendments, and for this purpose the 1966 UCC and the 1988 UCC Amendments must be considered one continuous statute.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑103.** Transition to 1988 UCC Amendments‑general rule.

Transactions validly entered into after the date specified in Section 36‑10‑101 and before the date specified in Section 36‑11‑101 and which were subject to the provisions of the 1966 UCC and which would be subject to the 1988 UCC Amendments if they had been entered into after the effective date of the 1988 UCC Amendments, and the rights, duties, and interests flowing from the transactions remain valid after the date specified in Section 36‑11‑101, and may be terminated, completed, consummated, or enforced as required or permitted by the 1988 UCC Amendments. Security interests arising out of the transactions which are perfected when the 1988 UCC Amendments become effective shall remain perfected until they lapse as provided in the 1988 UCC Amendments and may be continued as permitted by the 1988 UCC Amendments, except as stated in Section 36‑11‑105.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑104.** Transition provisions on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under the 1966 UCC and which attached prior to the effective date of the 1988 UCC Amendments but was not perfected is considered perfected on the effective date set forth in Section 36‑11‑101 of the 1988 UCC Amendments if the 1988 UCC Amendments permit perfection without filing or authorize filing in the office or offices where a prior ineffective filing was made.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑105.** Transition provision on change of place of filing.

(1) A financing statement or continuation statement filed prior to the date specified in Section 36‑11‑101 which has not lapsed prior to that date remains effective for the period provided in the 1966 UCC but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of the 1988 UCC Amendments, any effective financing statement or continuation statement described in this section applies only if the filing or filings are in the office or offices that would be appropriate to perfect the security interest in the new collateral under the 1988 UCC Amendments.

(3) The effectiveness of any financing statement or continuation statement filed prior to the date specified in Section 36‑11‑101 may be continued by a continuation statement as permitted by the 1988 UCC Amendments, except that if the 1988 UCC Amendments require a filing in the office where there was no previous financing statement, a new financing statement conforming to Section 36‑11‑106 must be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described in the mortgage if the 1988 UCC Amendments had been in effect on the date of recording the mortgage, the mortgage is considered effective as a fixture filing as to the goods under subsection (6) of Section 36‑9‑402 of the 1988 UCC Amendments on the effective date of the 1988 UCC Amendments as specified in Section 36‑11‑101.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑106.** Required refilings.

(1) If a security interest is perfected or has priority when the 1988 UCC Amendments take effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the 1988 UCC Amendments, the perfection and priority rights of the security interest continue until three years after the effective date of the 1988 UCC Amendments. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the 1988 UCC Amendments take effect under a law other than the Uniform Commercial Code as enacted in South Carolina which requires no further filing, refiling, or recording to continue its perfection, perfection continues until and will lapse three years after the 1988 UCC Amendments take effect, unless a financing statement is filed as provided in subsection (4), or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of Section 36‑9‑302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling, or recording under a law repealed or modified by this Title 36 as amended by the 1988 UCC Amendments which required further filing, refiling, or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed or modified for further filing, refiling, or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. The financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement, or notice (however denominated in any statute or other law repealed or modified by this Title 36 as amended by the 1988 UCC Amendments), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement, or notice, however denominated, in another filing office under the 1966 UCC or under any statute or other law repealed or modified by this Title 36 as amended by the 1988 UCC Amendments is still effective. Sections 36‑9‑401 and 36‑9‑103 determine the proper place to file the financing statement. Except as specified in this subsection, the provisions of Section 36‑9‑403(3) for continuation statements apply to the financing statement.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑107.** Transition provisions as to priorities.

Except as otherwise provided in this Chapter 11, the 1966 UCC applies to any questions of priority if the positions of the parties were fixed prior to the effective date of the 1988 UCC Amendments. In other cases questions of priority are determined by the 1988 UCC Amendments.

HISTORY: 1988 Act No. 494, Section 7.

**SECTION 36‑11‑108.** Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the provisions of the 1988 UCC Amendments are considered declaratory of the meaning of the 1966 UCC.

HISTORY: 1988 Act No. 494, Section 7.