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THE UNIFORM COMMERCIAL CODE — SB 122

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Senate Bill 122, enacting the Uniform Commercial Code in Washington, was passed during the recent legislative session. The effective date of the new statute is June 30, 1967.

Since 1952, when the Uniform Commercial Code [hereinafter cited as UCC] was first proposed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, it has been enacted by forty-one states, the District of Columbia, and the Virgin Islands. It is now much easier to list the states which have not enacted it. These are: Alabama, Arizona, Delaware, Idaho, Louisiana, Mississippi, South Dakota, South Carolina, and Vermont.

As this modern replacement for the older uniform commercial laws[1] and for the hodge-podge of anachronisms which constituted the pre-Code law of personal property security[2] was adopted across the country, Washington became an isolated area of commercial law obsolescence. We were still trying to carry on jet-age commerce with horse-and-buggy law—with nineteenth century sales and negotiable instruments principles, with warehouse receipts and bills of lading statutes prepared some sixty years ago, with no determinable legal system for a multi-million dollar letter of credit business, and with a jerry-built complex of secured-transactions law. The 1965 Washington legislature is to be commended for once again bringing this state into the mainstream of American commercial law.

The UCC modernizes and improves the substantive principles of commercial law. It is also the most comprehensive of the long series of uniform laws which have been prepared by the National Conference of Commissioners on Uniform Laws, and seems likely to be the most successful. The struggle for uniformity in the commercial law of the states, which began in 1895 with the Uniform Negotiable Instruments Act, has been to a considerable degree complicated by divergent judicial

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[1] Replaced are: The Uniform Negotiable Instruments Act, the Uniform Sales Act, the Uniform Bills of Lading Act, the Uniform Warehouse Receipts Act, the Uniform Stock Transfer Act, and the Uniform Trust Receipts Act. Also replaced is the Bank Collection Code.

[2] Replaced are the various statutes having to do with chattel mortgages, conditional sales and assignments of accounts receivable. Also replaced, with a more comprehensive coverage of the area, is the bulk sales statute.

construction. The Uniform Commercial Code affords few opportunities for bona fide dispute about the meaning of its language. Most important, it may be expected that modern judges, being fully aware of the importance of uniform operation of such a statute, will achieve uniformity in construction.

Much of the new statute has been discussed in previous issues of the *Washington Law Review*,[3] and in Comments for the State of Washington.[4] No attempt will therefore be made in this note to undertake a general discussion of substantive details. Our discussion will be limited to some new developments.

In enacting the UCC the Washington legislature departed at several points from the official text of the statute as proposed by the National Conference of Commissioners on Uniform State Laws. Familiarity with these changes will be important not only to Washington lawyers and their clients, but also to businessmen and their legal counsel all over the country. As forms and operating procedures are devised for use in inter-state commercial transactions, each intra-state aberration is a point of friction and risk which must be carefully noted.

I. ARTICLE 1 — GENERAL PROVISIONS

Section 1-208

The official text of this section reads:

> A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or per-

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[3] A general summary of the statute and its background appears in Shattuck, *The Uniform Commercial Code—A Modernization of Commercial Law*, 35 WASH. L. REV. 398 (1960).

Sales are discussed in: Johnson, *Sales—A Comparison of the Law in Washington and the Uniform Commercial Code*, 34 WASH. L. REV. 78 (1959); Cosway, *Sales—A Comparison of the Law in Washington and the Uniform Commercial Code*, 35 WASH. L. REV. 412, 617 (1960), 36 WASH. L. REV. 50, 440 (1961).

Commercial paper, *i.e.*, negotiable instruments, are discussed in Cosway, *Negotiable Instruments—A Comparison of Washington Law and Uniform Commercial Code Article 3*, 38 WASH. L. REV. 501, 719 (1963), 40 WASH. L. REV. 281 (1965).

Letters of Credit are discussed in Shattuck & Guernsey, *Letters of Credit—A Comparison of Article 5 of the Uniform Commercial Code and the Washington Practice*, 37 WASH. L. REV. 325, 500 (1962).

Secured transactions are discussed in Shattuck, *Secured Transactions (Other than Real Estate Mortgages)—A Comparison of the Law in Washington and the Uniform Commercial Code, Article 9*, 29 WASH. L. REV. 1, 195, 263 (1954).

[4] Published in 1962, this book contains not only the Official Comments to the *Uniform Commercial Code*, but also a section-by-section comparison of the entire statute with the Washington law as it was then, several cross-reference tables, and a very useful index.

formance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

As enacted in Washington, this section does not contain the concluding sentence of the official text. In deleting the statement that the burden would be on the debtor, obligor or other person against whom the power to accelerate is operative to disprove good faith, the legislature evidently assumes that the burden will be on the creditor, obligee or other holder of the power to accelerate to prove his good faith.

II. Article 2 — Sales

The first departure from the official text of Article 2 occurs in section 2-616. This section spells out the rights of the buyer on learning of an excusable delay on the seller's part. In essence, the buyer has the right to terminate the contract, either with respect to the particular delivery or, in some cases, with respect to the entire contract. Alternatively, the buyer may modify the contract, but unless he acts within thirty days after receipt of notice that there will be a delay, he is deemed to have terminated the contract.

This policy borrows from the contract principle of prospective failure of consideration, adding details implementing that policy. One detail, eliminated from the Washington version, is subsection (3) which provides:

> The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

The major effect of this subsection would be found in the very types of commercial arrangements where common understanding is probably to the contrary. That is to say, the impact of the subsection will not be significant in contracts with consumers, but will be of major importance in very large contracts between commercial firms where specially built products are involved. Such firms are usually free to bargain for some delay, and they are also free to allocate losses, such as those incurred in developmental expenses, in the event of contract termination.

The veto message of the Governor reflects dissatisfaction with the Code's departure from custom, suggesting that matters in this area ought best be left to arms-length bargaining, as it has been historically. Thus, this subsection is eliminated from our version of the Code. Wisconsin has also eliminated it.

A second departure in Article 2 occurs in section 2-706 which gives the seller the power of resale on breach by the buyer. The Washington legislature amended this section by adding a seventh paragraph:

> Any sale made hereunder, if a loss has been sustained, in order to charge the purchaser for the loss, the seller must have exerted a reasonable effort to obtain the fair market price of the said goods sold.

This paragraph seems to be designed to protect buyers from overreaching by sellers who dispose of the goods through devices not likely to bring a fair return, an aim which is totally unobjectionable. However, the difficulty is that essentially the same restrictions are stated in subsection (1) of the section:

> Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. *Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages* allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach. (Emphasis added.)

The necessary inference from this wording is that unless the seller does act in good faith and in a commercially reasonable manner he may *not* recover the difference between resale and contract prices. Thus, subsection (7) seems unnecessary, and its presence leads one to ask why it was inserted, and what will be its effect.

One may quickly dispense with the words "exerted a reasonable effort to obtain the fair market price," because they do not appear to add anything not already implicit in the basic requirement of commercial good faith found in the original version and in subsection (1). Any commercially reasonable sale would seem directed to obtaining an approximation of the fair market price, thus no new element is added.

The safest and most reasonable conclusion, therefore, is that subsection (7) spells out the inference left inarticulate in subsection (1), and thus has no real effect. There is, however, some danger that more will be read into subsection (7), because this subsection may suggest that unless the resale is commercially reasonable the seller is *without any remedy*. This is surely not what was intended and not what is encompassed in subsection (1), for the only sanction against the seller is that he may not rely on the resale price as setting the amount of his damage. If the resale is not a fair one—*i.e.*, one not designed to bring

in a return approximating the market price—the seller must turn to another measure of damage, namely the difference between the market price and the contract price. The advantage he gains by compliance with section 2-706 is that his resale, if proper, determines the "market price" in the formula. He loses that advantage if the sale is not proper, and thus he must prove his damage under section 2-708.

III. Article 3 — Commercial Paper

Article 3 seems to have been enacted without alteration.

IV. Article 4 — Bank Deposits and Collections

The only modification found in article 4 occurs in section 4-406, subsection (4). This section sets out the duties of the customer of a bank *(i.e.,* the drawer of checks) on return of his statement of account. Subsection (4) states a time limit within which the customer must act if he is to hold the bank responsible for payment out on checks on which his name (as drawer) was forged, on which there is an alteration, or on which there is a forged indorsement. With respect to a forged indorsement, the time limit is *three* years, but with respect to the other two, the time limit in Washington is sixty days, while in the official text the time limit is *one year.* What Washington has done, in short, is to retain the time limit stated in a previous statute, Washington Revised Code 30.16.020.

V. Article 5 — Letters of Credit

Washington adopted the official version of article 5.

VI. Article 6 — Bulk Transfers

In Washington, section 6-102(2) reads:

> A transfer of all or substantially all of the equipment (Section 9-109) of such an enterprise is a bulk transfer *whether or not made in connection* with a bulk transfer of inventory, merchandise, materials or supplies. (Emphasis added.)

In the official text version, however, a transfer of equipment is a bulk transfer *only if made in connection* with a bulk transfer of inventory, merchandise, materials or supplies. The significance and effect of the change are obvious.

Section 6-104(1)(c) is modified in Washington in two respects. The Washington version provides:

> Except as provided with respect to auction sales (Section 6-108), a

bulk transfer subject to this Article is ineffective against any creditor of the transferor unless . . .

The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, *and* files the list and schedule in the office of the county auditor of the county in which the property transferred is located *and serves it upon the office of the state tax commission; the list and schedule shall be indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee.* (Emphasis added.)

The italicized words demonstrate the Washington modifications. In the original version of the Code, the transferee has the option of preserving the list and schedule *or* filing it, while in Washington *both are required.* The last portion of the underscored words preserves details formerly required by the Washington bulk sales statutes with respect to filing with the tax commission and with respect to details of indexing. The reference to indexing of *chattel mortgages* seems to be an anachronism in view of the Code's generalized treatment of security agreements.

Subsection (3) of section 6-107 is also modified in Washington to include a provision for protection of the state tax commission, and to require filing of the notice. The words which have been added in Washington are italicized in the following quotation:

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (Section 6-104), to all other persons who are known to the transferee to hold or assert claims against the transferor, *and to the office of the state tax commission. A copy of the notice shall be filed in the office of the county auditor of the county in which the property transferred is located and indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee.*

VII. ARTICLE 7 — WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Article 7 appears to have been acted without change in the official text.

VIII. ARTICLE 8 — INVESTMENT SECURITIES

Article 8 appears to have been enacted without change in the official text.

IX. ARTICLE 9
SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

A. *The Background.*

Before examining the changes made by the Washington legislature in article 9 of the UCC, and the governor's veto of some of those changes, it may be helpful to consider both the commercial importance of article 9 and the particular need for uniformity in the area it covers.

The UCC is a statute designed for enactment in all of the fifty states and in the District of Columbia. If it were enacted in all of these jurisdictions, without local deviations, this country would have for the first time a truly national commercial law. That a nation-wide legal system for the governance of business transactions is badly needed seems obvious. Trade of all kinds pays little heed to political subdivisions. The prosperity of Washington is vitally dependent on our ability to find customers elsewhere and to import the things we need. We are part of a complicated network of interstate activity, much affected by both the law and the commercial well-being of our neighbors.

Business cannot flourish in an unfavorable legal environment. A favorable legal environment is a composite of two elements—the substantive principles, and freedom from the traps, risks and costs which businessmen encounter if the law under which they must operate varies from state to state. Article 9 should accordingly be measured both in terms of its substantive coverage, and also as part of a proposed national law. The latter goal is near to attainment, as enactment of the UCC by all of the states now seems likely. If legislatures in enacting the statute will resist pressure for the introduction of variations favoring a local group, a major contribution to the future economic welfare of the country will have been made.

That part of commerce which consists of credit secured by personal property is only to a degree less national than are the movements of goods and commercial paper. The national total of such financing is very large—approximately one hundred billion dollars.[5] Still more billions are involved in sales of accounts and chattel paper.

[5] Mr. Robert Coleman, Assistant Vice-President, Seattle-First National Bank, estimates consumer credit at about sixty-two billions, bank loans to brokers and bank loans to customers secured by stocks and bonds at about seven billions, industrial and commercial loans at about fifty-five billions of which half or a little less than half are thought to be secured by personal property, and miscellaneous bank loans secured by personal property at about five billions.

Equally significant is the fact that the velocity of trade and the total volume of sales at all levels—retail, wholesale and manufacturing—would drop drastically were it not for secured credit. The prosperity of all of us, including the prosperity of those who extend unsecured credit, is tightly interwoven with the availability of secured credit to consumers, merchants and manufacturers. Much of that credit can be secured only by personal property.

This state, no less than any other, is vitally concerned with both aspects of the secured transactions sections of the UCC—the substantive details which would clarify and simplify the complex of mortgage, pledge, conditional sale and trust receipt which is the present Washington law, and with the opportunity afforded by the UCC to join with the other forty-nine states and the District of Columbia in an endeavor to create a national law for secured transactions.

The fact that a few other states, notably California, have been motivated to impose local considerations on article 9 and thus to frustrate to that extent a major objective of the statute only emphasizes the folly of such a course.

Concerning the substantive details of UCC article 9, it will be useful to remember that the drafting and re-drafting which produced the bill introduced in the Washington legislature extended over nearly twenty years prior to completion of the final draft in 1962, that the statute had been scrutinized by the National Conference of Commissioners on Uniform State Laws, by the American Law Institute, by the New York Revision Commission, and by numerous other legislative, bar association and trade association study groups, and that the statute is a tightly integrated whole.

B. *The Washington amendments.*

Section 9-206(1)

The official text of this subsection reads:

> (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

The final sentence of the subsection was deleted by amendment. The following sentence was added by amendment: "Provided, That nothing in this act may be construed as depriving a buyer, as against an assignee, of asserting the defenses of fraud or material misrepresentation by the seller." This sentence was vetoed. The governor's veto message pointed out the fact that Washington Revised Code 63.14.150 amply protects consumers against waivers of defenses, including those based on fraud or material misrepresentation, and the fact that the amendment created doubt about the status of a negotiable instrument in the hands of a holder in due course.

The end result of amendment and veto is the official text of the subsection without the concluding sentence. The absence of this sentence should make no substantial difference in the operation of the subsection. General principles of negotiability which come into play whenever a debtor signs a negotiable note will cut off certain defenses if the instrument comes into the hands of a holder in due course, whether or not the note is secured. The interest of a secured party in collateral is measured by his rights under the secured note.[6]

Section 9-208

The official text of this section reads:

> (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.
>
> (2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as

[6] American Sav. Bank & Trust Co. v. Helgesen, 64 Wash. 54, 116 Pac. 837 (1911).

a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

The general purpose of this section is to create a system which gives the debtor a legal right to receive from the secured party a current report of his obligation and the collateral. By amendment the Washington legislature added to the first sentence of section 9-208(1) the phrase "or any other person whom he designates in writing to the secured party." This change will require the secured party to transmit the statement of obligation or collateral to a third person who comes within the scope of the amendment. This change is implemented by also changing the first part of the third sentence of section 9-208(2) to read: "If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor or such other person as the debtor has designated as the recipient of such information thereby;" and by changing the next to the last sentence of section 9-208(2) to read: "If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor or designated recipient of the information as a result of failure to disclose."

This amendment illustrates consequences of deviation from uniformity in article 9. The section as enacted here is unique to Washington and will force finance companies and other types of financing institutions which operate interstate to set up special Washington procedures for handling the transmission of reports to third persons. It will be noted that each request for a statement must come from the debtor. Some relief from the nuisance effect of broadening the range of statement-recipients is afforded by section 9-208(3), which permits the secured party to charge ten dollars for each statement after the first one in each six-month period.

Section 9-310

The official text of this section reads:

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of

law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

As enacted in Washington the section reads:

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest *only if the lien is statutory and the statute expressly provides for such priority.*

The underscored material is the changed part. Although there appears to be no legislative history explaining the amendment it may be surmised that the official text was found to conflict with the policy of Washington Revised Code ch. 60.08 and of Washington Revised Code ch. 60.56 as construed by the Washington court.[7] The chattel lien created by Washington Revised Code 60.08.010 is made subordinate to an earlier and perfected security interest by Washington Revised Code 60.08.030 without regard to possession. The official text would have changed the operation of the agister's lien law, because Washington Revised Code ch. 60.56 does not expressly provide for priorities and the present priority of an earlier security interest results from judicial construction.

Section 9-402

The official text of subsections (1) and (3) of this section reads:

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(3) A form substantially as follows is sufficient to comply with subsection (1):

[7] Levitch v. Link, 95 Wash. 639, 164 Pac. 233 (1917).

Name of debtor (or assignor) .....
Address .....
Name of secured party (or assignee) .....
Address .....

1. This financing statement covers the following types (or items) of property:
   (Describe) .....
2. (If collateral is crops) The above described crops are growing or are to be grown on:
   (Describe Real Estate)
3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:
   (Describe Real Estate) .....
4. (If proceeds or products of collateral are claimed)
   Proceeds—Products of the collateral are also covered.
   Signature of Debtor (or Assignor) .....
   Signature of Secured Party (or Assignee) .....

It will be observed that section 9-402(1) states in substantive terms what a financing statement shall contain, while section 9-402(3) states that the indicated forms will suffice.

The legislature amended section 9-402(1) by adding a requirement that the financing statement indicate the debtor's chief place of business, the maximum amount of indebtedness, and the terms of repayment.

These changes in section 9-402(1) were particularly harmful to the principle of uniformity. They also made the over-all meaning of the subsection unclear. The governor vetoed them.

Uniformity among the states is especially important in the statutory regulation of the forms required for accomplishing perfection by filing. It should be possible to develop forms which can be used with assurance in any UCC jurisdiction. The amendment not only destroyed uniformity, but also added three technical requirements which would have been difficult to satisfy beyond the risk of controversy. Any debtor, whether individual, partnership or corporate, who did business in more than one place would have presented the draftsman of a financing statement with the necessity for selecting the appropriate place and with an opportunity to make a mistake.

A statement of the maximum amount of the indebtedness would have been a meaningless formality so far as actually informing a record searcher is concerned. A well-advised draftsman would have stated a

figure large enough to cover any contingency. Ordinary transactions would probably have called for a routine statement of "One million dollars" and larger ones for a statement of "Ten million dollars." In short, the demand served no useful commercial purpose. It did create a trap for the unwary. A secured party not informed of this totally new kind of legal requirement might easily have made a mistake in preparing his financing statement, and so have created doubt about the effectiveness of his filing.

A requirement that the financing statement "specify the terms of repayment" would have made section 9-402(1) hopelessly ambiguous. This subsection creates a notice type of filing system—one which contemplates the filing either of the security agreement or of a simple form which apprises third persons that security transactions may be entered into between the parties as to certain collateral or types of collateral. It expressly states that "A financing statement may be filed before a security agreement is made or a security interest otherwise attaches." Much of the substantive fabric of the statute, particularly sections 9-203, 9-204, 9-303 and 9-306, contemplates the development and use of financing which extends over the life of a business transaction, which is documented at or before the beginning stage of the transaction, and which goes on the public records at that time.

In addition to the inherent vice in a requirement that the terms of repayment be stated in the financing statement, there is manifest difficulty in satisfying the demand with the assurance requisite to a filing system. The phrase "specifies the terms of repayment" is itself unclear and imprecise. Specifies as to what date? What of extensions of time or of modifications? What of future advances? What of acceleration clauses? These are only some of the questions the draftsman would have been obliged to ask—and for which certain answers would not have been obtainable.

This amendment of section 9-402(1) would have had serious reverberations in many directions. It would have created doubt about the perfection of innumerable security interests, and would have caused a monumental amount of controversy. Section 9-402(3) was amended to conform with the amendment of section 9-402(1), with an additional change which would have made section 9-402(3) ambiguous. The governor vetoed the amendment of section 9-402(3).

In addition to the changes in section 9-402(3) conforming that subsection to the amendment of section 9-402(1), the amendment of sec-

tion 9-402(3) added "timber" to the categories of collateral which require a financing statement identifying the land. Since section 9-402(1) contains no such requirement, this passage was ambiguous.

The amendment also deleted all reference in section 9-402(3) to fixtures. The end result of the amendment and the veto is a subsection without subparagraph 3 of the official text, which refers to fixtures. Section 9-402(1), however, is the section which provides the substantive coverage. It can be satisfied only by a financing statement which, as to fixtures, identifies the land. The danger is that a secured party will proceed on the basis of section 9-402(3), which says nothing about fixtures, overlooking section 9-402(1), and thus get into trouble.

The amendment and the veto also leave section 9-402(3) with changes in wording and organization which will necessitate careful study and rearranging by persons from other states who more commonly work with the official text.

Section 9-501(1)

This subsection states the basic remedies provision of the statute, and is supplemented by the sections which follow it. The Washington legislature added a paragraph to section 9-501(1), reading:

> Notwithstanding any other provisions of this Code, in the case of a purchase money security interest in consumer goods taken or retained by the seller of such collateral to secure all or part of its price, the debtor shall not be liable for any deficiency after the secured party has disposed of such collateral under Section 9-504 or has retained such collateral in satisfaction of the debt under subsection (2) of Section 9-505.

The effect of this amendment is to make a secured party, whose collateral secured purchase money, liable to account for a surplus if he repossesses the goods and sells them pursuant to section 9-504, but deprives him of all right to a deficiency if he proceeds under section 9-504. There was no counterpart in the prior practice for so drastic a rule. Under the election principle as it was earlier stated by the Washington court, a conditional sale vendor (but not a purchase money mortgagee) had to choose between taking the property or pursuing his money claim but if he chose the former remedy he was not obliged to account for any excess in the value of the property above the debt balance.[8] In the prior practice a chattel mortgagee, whether the secured obligation resulted from a sale or from a loan, could not repossess the

[8] The latest of the election-rule decisions is Washington Co-op. Chick Ass'n v. Jacobs, 42 Wn.2d 460, 256 P.2d 294 (1953).

collateral.[9] He could combine an action to foreclose with an action on the obligation and so obtain a deficiency judgment.[10]

Section 9-505(2) creates a procedure by which the collateral can be taken in lieu of the obligation and the reference to this subsection in the amendment is redundant.

The limitation on remedies imposed by the amendment is a good deal less sweeping than appears at first encounter. UCC section 9-501(1) expressly states that a secured party "may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure."

The amendment is practically operative only where out-of-court realization methods are followed under section 9-504 (by a secured party who "has taken possession" presumably under section 9-503). If the secured party is willing to undertake the delay and expense entailed in a foreclosure action combined with an action on the debt he can obtain a deficiency judgment. Although Washington Revised Code ch. 61.08, which was concerned with foreclosure of chattel mortgages, has been repealed, the Superior Courts of Washington have inherent equity jurisdiction including jurisdiction to foreclose a security interest.

There is still another route by which a deficiency judgment can be obtained. The amendment added to section 9-501(1) leaves unaffected the procedure authorized by section 9-501(5), which reads:

> When a secured party has reduced his claim by judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

Under this section the secured party's security-interest priority in the collateral extends to the lien obtained by levy on the property which constitutes the collateral, the execution and levy procedure serving as a kind of foreclosure. See comment 6, section 9-501. Since the judgment will be discharged only to the extent that the execution sale yields payment, a levy can be made against other assets in the event of a deficiency.

[9] Roche Fruit & Produce Co. v. Vaught, 143 Wash. 601, 255 Pac. 953 (1927).
[10] WASH. REV. CODE § 61.12.070; Lassen v. Curtis, 40 Wn.2d 82, 241 P.2d 210 (1952).