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COMMERCIAL CODE

Financing Statement: Maturity Date

CODE SECTIONS:	O.C.G.A. §§ 11-9-402 (amended) and 11-9-403 (amended)
BILL NUMBER:	HB 712
ACT NUMBER:	753
SUMMARY:	The Act adds a requirement for a maturity date on financing statements or specification that the obligation does not have a maturity date; provides that the duration of the financing statement shall be for five years or twenty days after the maturity date; and provides for a maturity date on continuation statements or specification that the obligation does not have a maturity date.

History

In 1962 the Georgia General Assembly enacted a version of the Uniform Commercial Code (U.C.C.).[1] Prior to HB 712, the formal requisites of a financing statement included the names and addresses of the debtor and the secured party, the signature of the debtor and a statement describing the collateral by item or type.[2] The Code also provided that a financing statement remained effective for five years after the date of filing.[3]

The official comment to U.C.C. § 9-402 states that the purpose of the financing statement is to give notice to the world that the filing party may have a security interest in the collateral described.[4] U.C.C. § 9-403 provides that the financing statement lapses after five years. This allows the public files to be self-clearing since the filing officer may automatically discard lapsed financing statements.[5] This limits the need to have files cleared by termination statements[6] and facilitates the searcher's

1. 1962 Ga. Laws 156.
2. O.C.G.A. § 11-9-402(1) (1982).
3. O.C.G.A. § 11-9-403(2) (1982).
4. U.C.C. § 9-402, comment 2 (1978).
5. U.C.C. § 9-403, comment 2 (1978).
6. U.C.C. § 9-404 (1978) and O.C.G.A. § 11-9-404 (1982).

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task.[7]

The importance of an early filing date is codified in the general priority provisions of O.C.G.A. § 11-9-312(5)(a). In all cases not governed by other rules, conflicting security interests in the same collateral rank in order of first to file or perfect as long as there is no lapse subsequently where there is neither filing nor perfection. Since the financing statement need only describe the collateral by item or type, a creditor could maintain his priority for subsequent loans as long as the collateral was the same as described in the original financing statement.

HB 712

HB 712 amends O.C.G.A. §§ 11-9-402(1) and 11-9-403(2) by requiring that the maturity date, if any, on the debtor's underlying obligations be included in the financing statement. If there is no maturity date on the underlying obligation, then that fact must be indicated. The Act also amends O.C.G.A. § 11-9-403(2), concerning the duration of a filed financing statement. The filed financing statement is effective for five years *or* twenty days after the maturity date specified in the financing statement, whichever is earlier.

HB 712, as passed by the Legislature, contained an exception to the lapse of financing statements of obligations in default.[8] The Legislature neither defined default nor specified whether the exception applied to all financing and continuation statements or only to financing and continuation statements with a maturity date.[9] However, this exception was not included in the version which was presented to the Governor as the "as passed" bill. The Governor signed the version presented, and it became law.[10]

The addition of twenty days effectiveness following the maturity date of the obligation raises a potential problem for timely filing of continuation statements. A continuation statement may be filed six months prior to expiration.[11] If a secured party filed a continuation statement six months prior to the maturity date, the filing could be ineffective due to the additional twenty days effectiveness. To avoid this timing problem, a "five month" rule is suggested for filing all continuation statements.[12]

The Act applies to financing statements filed after the July 1, 1985,

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7. U.C.C. § 9-403, comment 2 (1978).

8. HB 712 (AP), 1985 Ga. Gen. Assem. § 3.

9. Carson, Conrad & Dobbs, *H.B. 712: New Requirements for Financing Statements and Continuation Statements in Georgia*, Ga. St. B.J., August, 1985 at 6.

10. Interview with Rick Stancil, Assistant Executive Counsel, in Atlanta (Dec. 27, 1985). *See also* Carson, Conrad & Dobbs, *supra* note 9, n.1 at 14.

11. O.C.G.A. § 11-9-403(3) (Supp. 1985).

12. Carson, Conrad & Dobbs, *supra* note 9, at 6.

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effective date.[13] It does not specify whether the Act applies "to all continuation statements filed on or after July 1, 1985, or only to those which continue the effectiveness of financing statements originally filed on or after July 1, 1985."[14] The Act does not address how financing statements filed prior to July 1, 1985, or financing statements securing "multiple obligations with different maturity dates"[15] are to comply with the maturity date requirements.

The stated purpose of the Act was to reduce paper and make the searcher's task easier by clearing financing statements twenty days after the stated maturity date rather than at the end of five years. Recent commentary on the Act has raised questions about its efficacy. HB 712 is described as the resurrection of "a trap for the unwary . . . [that] is not so easily avoided."[16] In criticizing the lack of clarity of the Act, commentators cite several interpretative problems including cases of: (1) a single secured obligation with specified maturity date or no maturity date, (2) a single secured obligation with uncertain maturity date, (3) multiple secured obligations, (4) future advances, (5) revolving credit facilities, (6) loan consolidations, (7) amendments to financing statement, (8) prefiling, (9) security agreement as a financing statement, (10) mortgage as a fixture filing, and (11) obligations in default.[17] Georgia is the only jurisdiction adopting the Uniform Commercial Code which has mandated that maturity dates be included on financing statements.[18]

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13. HB 712, 1985 Ga. Gen. Assem. § 5. *See also* O.C.G.A. § 11-9-403 (Supp. 1985) Editor's notes.
14. Carson, Conrad & Dobbs, *supra* note 9, at 6.
15. *Id.*
16. *Id.* at 7.
17. *Id.* at 7-13.
18. *Id.* at 13.

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