CHAPTER 10

Commercial Code—Effective Date and Repealer

Editor’s Note

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**SECTION 36‑10‑101.** Effective date.

 Except as otherwise provided in Chapter 11 of this title, this title becomes effective at 12:01 a.m., January 1, 1968. It applies to transactions entered into and events occurring after that date.

HISTORY: 1962 Code Section 10.10‑101; 1966 (54) 2716; 1988 Act No. 494, Section 6.

Editor’s Note

“This act,” referred to in this section, means Act No. 1065 of the 1966 Acts and Joint Resolutions, originally codified as Titles 10.1 to 10.10 of the Code of Laws of South Carolina 1962, and now codified as Title 36 of the Code of Laws of South Carolina 1976.

OFFICIAL COMMENT

This effective date is suggested so that there may be ample time for all those who will be affected by the provisions of the Code to become familiar with them.

None.

SOUTH CAROLINA REPORTER’S COMMENT

This section establishes the effective date for the entire Uniform Commercial Code as enacted in South Carolina. See Chapter 11 for the effective date of the 1972 Text amendments which are referred to in Chapter 11 as “the 1988 UCC Amendments”. The language utilized in this section is the same as that used in the UCC as enacted in 1966 by the South Carolina General Assembly with the exception of the introductory phrase concerning Chapter 11.

CROSS REFERENCES

General rule for transition to the 1988 UCC Amendments, see Section 36‑11‑103.

**SECTION 36‑10‑102.** Transactions entered into before effective date of Commercial Code.

 Transactions validly entered into before the effective date specified in Section 36‑10‑101 and the rights, duties, and interest flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this title as though the repeal or amendment had not occurred. Except as otherwise provided in Section 36‑11‑106 the filing of a properly executed financing statement pursuant to Section 36‑9‑402 or a properly executed continuation statement pursuant to Section 36‑9‑403(3) in the appropriate place or places specified in Section 36‑9‑401 is sufficient to satisfy the requirements of this section as to proper filing in the case of a transaction entered into prior to the effective date specified in Section 36‑10‑101. This section is considered to have been effective as of January 1, 1968.

HISTORY: 1962 Code Section 10.10‑102; 1968 (55) 2799; 1988 Act No. 494, Section 6.

OFFICIAL COMMENT

None.

SOUTH CAROLINA REPORTER’S COMMENT

With the exception of the provisos which are new, the language in this section is the same as Section 10‑102(2) of the 1962 Text. It was not adopted when the UCC was originally enacted in South Carolina in 1966, but was added in 1968. Essentially this section provides that any valid transaction entered into before January 1, 1968, the effective date of the UCC in South Carolina, will continue to be valid after the effective date of the UCC on the same basis as if the UCC had never been enacted.

This means that as far as chattel mortgages that were effective on January 1, 1968, are concerned, it would be permissible to renew the chattel mortgage in accordance with the provisions of Section 60‑306 of the 1962 South Carolina Code even though Section 60‑306 was impliedly repealed when the UCC was enacted. See the Reporter’s Notes to Section 9 of Act 494 of 1988, which is part of the legislation enacting the 1988 UCC Amendments. See also 1967‑68 Op. Att. Gen. 2450 at pg. 110. However, this procedure presents two major practical problems: (1) is the refiling in the chattel mortgage books under Section 60‑306 of the 1962 South Carolina Code the exclusive method of renewing such transactions, or is it also permissible to file a financing statement, which must be signed by both the secured party and the debtor, or merely a continuation statement, which need only be signed by the secured party; and (2) what type of filing must be made in situations where additional sums may have been advanced under a future advance clause in a chattel mortgage security agreement signed before January 1, 1968, or where additional collateral is added after the effective date of the UCC to a pre‑January 1, 1968, chattel mortgage under an after‑acquired property clause. The provisos at the end of this section, which are made retroactive to January 1, 1968, are designed to answer these questions by making it clear that the proper filing of either a financing statement or a continuation statement would be sufficient in the circumstances mentioned. The net result is that as far as pre‑January 1, 1968, perfected chattel mortgages are concerned filing under Section 60‑306 of the 1962 South Carolina Code or Sections 36‑9‑401 et seq. of the 1976 South Carolina Code will be sufficient to continue perfection of a pre‑code secured transaction without any gap or rights accruing to any intervening creditor (including a trustee in bankruptcy). In addition, the enforcement of such pre‑code transactions will be governed by the pre‑code chattel mortgage statutes or Part 5 of Article 9 of the UCC at the option of the secured party mortgagee.

Note that this section does not, except as explained below, eliminate the need to check the chattel mortgage records to determine if a pre‑code secured transaction is still effective; however, sufficient time has passed since the effective date of the UCC in South Carolina that with the exception of some large industrial plant mortgages and indentures, most of the pre‑code transactions have now either been terminated or satisfied or have been refinanced in a transaction fully covered by the UCC so the number of cases when an actual check of the chattel mortgage records will be necessary or desirable will not be burdensome. It is also important to note that after January 1, 1988, the effective date of the 1972 Text in South Carolina, an additional renewal of these pre‑code transactions must be made in accordance with the provisions of Section 36‑11‑106(4), which requires the filing of a special type of financing statement in such circumstances. See Section 36‑11‑106(3). At the end of three years from the date specified in Section 36‑11‑101, it will therefore no longer be possible to continue perfection of these pre‑code transactions by filing a renewal filing under Section 60‑306, which authorizes a renewal for a maximum three‑year period, and after that time there will be no further need to check the chattel mortgage books for any pre‑code security interests.

CROSS REFERENCES

Filing for perfecting security interests, see Sections 36‑9‑501 et seq.

Preservation of old transition procedures, see Section 36‑11‑102.

**SECTION 36‑10‑103.** General repealer.

 All acts or parts of acts inconsistent with 1988 Act No. 494 are repealed.

HISTORY: 1962 Code Section 10.10‑103; 1966 (54) 2716; 1988 Act No. 494, Section 6.

OFFICIAL COMMENT

This section provides for the repeal of all other legislation inconsistent with this Act.

None.

SOUTH CAROLINA REPORTER’S COMMENT

See Sections 8 and 9 of Act 494 of 1988 for a list of the statutes that are either modified or repealed by the 1966 UCC and the 1988 UCC Amendments. The Reporter’s Notes to these sections contain a detailed explanation of each affected code section.

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CROSS REFERENCES

Construction of this code so as to avoid implied repeal by subsequent legislation, see Section 36‑1‑104.

LAW REVIEW AND JOURNAL COMMENTARIES

Mandatory Recording of Personal Property Leases in South Carolina: An Examination of the South Carolina Bailment Statute as Affected by U.C.C. Article Nine. 30 S.C. L. Rev. 557.