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# Amending the Uniform Commercial Code

By FREDERICK W. WHITESIDE, JR.\*

## INTRODUCTION: UPDATING THE CODE

When Kentucky adopted the Uniform Commercial Code by action of the 1958 General Assembly, the draft which became law was the 1957 Official Text as promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. As anticipated, some errors were discovered later and improvements were suggested by the sponsors of the Code. This ultimately resulted in an improved 1958 Official Text. Updating of the Kentucky Code to conform to the 1958 Official Text is the main accomplishment, and comprises the greatest portion, of the 1962 Kentucky legislation relating to the Code.<sup>1</sup> While some of the amended sections constitute minor improvement in wording and changes to clarify the relation between different sections, others are of major importance.

One important substantive change achieved by the 1958 Official Text is in article 9, section 412(4), relating to the priority to be accorded purchase money security interests in collateral other than inventory. Under the Code these interests may be superior even to valid security interests in after-acquired property under previously filed financing statements. In order to be allowed such priority, the 1957 version required that a purchase money security interest in such collateral, let us say equipment

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<sup>1</sup> Ky. Acts 1962, ch. 83, at 302 (effective June 14, 1962), codified in scattered sections of Ky. Rev. Stat. chs. 355, 382, 186 (1962) [hereinafter cited as KRS]. While the 1958 Official Text of the Uniform Commercial Code as promulgated by the American Law Institute and the Conference of Commissioners on Uniform State Laws (hereinafter cited as UCC) is the law which has now been codified in KRS Chapter 355 (happily without the change in numbering found in some other adopting states) there are several significant Kentucky deviations from the Official Text discussed in this article. Since the Kentucky enactment is now for the most part the same as the 1958 Official Text both will be referred to herein as the "Code", and any pertinent Kentucky deviations from the Official Text will be specifically noted as such.

used in the debtor's business, be perfected by filing at the time the debtor received possession.<sup>2</sup> This was unrealistic. The seller does not withhold delivery of possession of a truck the purchaser wants in his business until notice of the security interest can be filed in the County Clerk's office. The sale might be consummated and possession be transferred after hours or on a holiday. In recognition of the common business practice of selling the property subject to the seller's valid security interest therein for the purchase price if he files within a reasonable time, the 1962 amendment gives the secured seller ten days after delivery of possession within which to file.<sup>3</sup> It will be noticed that the liberalization of article 9, section 312(4), to allow ten days for perfection of a purchase money security interest in goods delivered to the debtor is comparable to the time allowed for perfection of such purchase money interests in order to take priority over the rights of lien creditors and transferees in bulk.<sup>4</sup> One other minor discrepancy in the wording of the Kentucky and the official version was likewise corrected by the 1962 amendment. The law now requires the purchase money interest to be perfected within ten days after "the collateral comes into possession of the debtor" instead of the former time, "after he gives value."<sup>5</sup>

#### REVISION OF PRIOR LEGISLATION INCONSISTENT WITH CODE

The changes of the 1962 amendment include one needed, though minor, tidying-up job, modifying two long-standing provisions in Kentucky's statutes which offered potential conflict

<sup>2</sup> Ky. Acts 1958, ch. 77, §9-312(4), at 399-401, codified as KRS 355.9-412. The seriousness of this error was pointed out in Kripke, *Kentucky Modernizes the Law of Chattel Security*, 48 Ky. L.J. 369, 384 (1960). The previously filed financing statement may be broad enough to cover the newly purchased inventory by means of an after-acquired property clause in the statement or by a subsequent security agreement covering the property.

<sup>3</sup> See National Conference of Commissioners on Uniform State Laws, *Uniform Laws Annotated, 1958 Supplement to Uniform Commercial Code §9-312(4)*, comment at 17 (1958); Kripke, *supra* note 2, at 384 (recommending amendment to adopt 1958 version).

<sup>4</sup> UCC §9-301(2) provides:

If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

<sup>5</sup> Ky. Acts 1962, ch. 83, § 6, at 307. This was recommended in Whiteside & Lewis, *Kentucky's Commercial Code—Some Initial Problems in Security*, 50 Ky. L.J. 65, 81 (1961),

with the Code. These provisions are to be found in the chapter of the Kentucky statutes affecting conveyances, which contains typical provisions requiring acknowledgements<sup>6</sup> and statement of the maturity dates<sup>7</sup> prerequisite to recording deeds and mortgages. The Court of Appeals in *Lincoln Bank & Trust Co. v. Queenan*<sup>8</sup> had already held these provisions to be inapplicable to financing statements under the Code. To make clear, in accordance with the Court of Appeals decision, that such provisions are inherently inconsistent with the basic principle governing the filing of a simple form of financing statement under the Code, the amendment phrases the statute so that the two requirements have no application to personal property security transactions under the Code but apply only to real property transactions to be recorded.<sup>9</sup>

The last section of the 1962 amendment repeals additional statutory provisions in other chapters of the statutes determined to be inconsistent with or at least overlapping the Uniform Commercial Code.<sup>10</sup> Among these are nearly all the remainder of the old statutory sections affecting chattel mortgages,<sup>11</sup> repeal of which had been overlooked at the time the Code was first enacted, certain sections in the banking laws affecting the payment and non-payment of checks,<sup>12</sup> and an inconsistent provision in the laws affecting cooperatives which would subordinate "crop mortgages to the rights of agricultural cooperatives under marketing contracts."<sup>13</sup>

#### DEPARTURES FROM UNIFORMITY BY KENTUCKY LEGISLATION SUBSEQUENT TO CODE

A year ago Professor Lewis and I deplored the piecemeal amendment of the Uniform Commercial Code by new legislation

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<sup>6</sup> KRS 382.270.

<sup>7</sup> KRS 382.330.

<sup>8</sup> 344 S.W.2d 838 (Ky. 1961).

<sup>9</sup> Ky. Acts 1952, ch. 83, §16, at 320, amends KRS 382.270, with reference to the requirement to eliminate the words "or personal" modifying the word "property." Similarly Ky. Acts 1962, ch. 83, §17, at 320, adds the words "covering real property" in connection with the requirement of maturity date in KRS 382.330. See Whiteside & Lewis, *supra* note 5, at 68-69 (recommending similar amendment).

<sup>10</sup> Ky. Acts 1962, ch. 83, §21, at 326.

<sup>11</sup> KRS 382.635, -.740, -.750, -.760, -.780, -.790.

<sup>12</sup> KRS 287.390-.407.

<sup>13</sup> KRS 272.340.

subsequently passed.<sup>14</sup> Some of this new legislation can be found in the form of amendments to the Code itself, whereas other such legislation is scattered throughout the Kentucky statutes, to the attorney's dismay. Happily, some, though by no means all, of this tampering with the Code through passage of related inconsistent legislation, has been corrected by the 1962 Legislature.

Examples of this piecemeal tampering through the passage of other statutes outside the Code are found in four miscellaneous provisions added by the 1960 General Assembly to that part of the chapter on "Conveyances and Encumbrances," which dealt with chattel mortgages. The 1962 amendment merely transposes these provisions to the appropriate section in article 9 of the Code, repealing the prior 1960 provisions. This follows the recommendation made in 1961 that changes in the Code should be made in the Code provisions themselves but departs from the recommendations made for their repeal. The first such provision<sup>15</sup> adds to the Code description of what the financing statement must contain, the requirement that, if the collateral is consumer goods "normally carrying a serial number," the description and serial number of each item must appear in the financing statement. If the collateral is a motor vehicle the motor number or identification number as well as the make, model and year must also be given. This provision complicates the simple form of financing statement prescribed in the Code, adding a requirement not found in the statutes of other states which have adopted the UCC. Further, since many small items may not generally be known to carry serial numbers, there seems to be an additional trap for the uninitiated.<sup>16</sup> Short of repeal, there is some comfort to attorneys in the fact that the requirement is now to be found in the appropriate Code provision rather than in the overlapping, now obsolete chattel mortgage statute.

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<sup>14</sup> See Whiteside & Lewis, *supra* note 5.

<sup>15</sup> KRS 355.9-402(1), as amended, Ky. Acts 1962, ch. 83, §10, at 312. The original statute, containing identical language, was KRS 332.770, enacted Ky. Acts 1960, ch. 13, §1, repealed Ky. Acts 1962, ch. 83, §1, repealed Ky. Acts 1962, ch. 83, §21, at 326.

<sup>16</sup> Recommendation for complete repeal of this provision for the reasons stated was made in Whiteside & Lewis, *supra* note 5, at 79. As to motor vehicles, some justification for retention of the requirement arises from the failure of Kentucky to adopt an adequate certificate-of-title or motor vehicle registration law to provide necessary safeguards against traffic in stolen vehicles. See discussion p. 12 *infra* for recommendation of certificate-of-title law.

A second such provision,<sup>17</sup> now transposed from the repealed chattel mortgage statutes to section 9-402 of the Code, requires that when the indebtedness secured is expected to exceed \$200 the financing statement shall so state. Apart from an objection based purely upon the departure from the language of the uniform act as adopted in other states, it has been pointed out that such a provision "seems to have no legitimate purpose in modern financing, especially in the field of inventory financing where a floating lien upon shifting stocks of merchandise may be created to secure varying amounts of present and future indebtedness."<sup>18</sup> At least the writers recommending repeal of this requirement can find some solace in the fact that the requirement now appears in the Code itself rather than being tucked away in the prior overlapping provisions on chattel mortgages, which should have been repealed when the Code first became effective.

A similar improvement by the 1962 amendment is the repeal of the old statute requiring that a continuation of a financing statement be identified by date as well as by file number<sup>19</sup> and its reenactment as an amendment added to the section of the Code itself which relates to continuation statements.<sup>20</sup>

Another departure by Kentucky from the uniform version of the Code is in relation to the filing of a termination statement when there is no longer any indebtedness. The uniform version requires the secured party to file a termination statement when he no longer has a security interest within ten days upon demand by the debtor, with no such requirement in the absence of a demand by the debtor. The Kentucky Code provides, in addition to the required statement within ten days after demand by the debtor, that the secured creditor shall file, even in the absence of such demand, a termination statement within thirty days after the secured transaction has terminated.<sup>21</sup> Here again, Kentucky's departure was first enacted in 1960,<sup>22</sup> and perpetuated in 1962.<sup>23</sup>

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<sup>17</sup> KRS 355.9-402(1) (The last sentence is added to the section by Ky. Acts 1962, ch. 83, §10, at 312.) The original statute containing identical language was KRS 382.780, enacted, Ky. Acts 1960, ch. 13, §2, repealed, Ky. Acts 1962, ch. 83, §21, at 326.

<sup>18</sup> Whiteside & Lewis, *supra* note 5, at 80.

<sup>19</sup> Ky. Acts 1960, ch. 11, §1, repealed Ky. Acts 1962, ch. 83, §21, at 326.

<sup>20</sup> KRS 355.9-403, -404.

<sup>21</sup> KRS 355.9-404(2).

<sup>22</sup> Ky. Acts 1960, ch. 53, repealed, Ky. Acts 1962, ch. 83, §21, at 326. This

(Continued on next page)

## WHERE TO FILE

Almost as important as updating Kentucky's Code by adoption of the latest text, and coordinating related legislation with the Code, are the new provisions regarding the proper place for filing financial statements. This was made necessary by Kentucky's rejection of the Code's plan of centralized filing on a state-wide basis in favor of the time-honored scheme of local filing. Kentucky's first version, in providing for local filing in all cases, designated the County Clerk's office (in the county of the debtor's residence, or the county where the goods were kept when the debtor was not a resident of Kentucky) as the proper place to file for "goods," but omitted the catch-all provision found in the Official Text which, "in all other cases" provides for centralized filing in the office of the Secretary of State.<sup>24</sup> The 1962 amendment corrects this defect comprehensively by specifying the filing provisions to govern all situations.<sup>25</sup> The proper place to file is now as follows: (1) for consumer goods, farm equipment, or farm products (including also accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer),<sup>26</sup> filing must be made in the office of the County Court Clerk (a) in the county of the debtor's residence or (b) in the

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(Footnote continued from preceding page)

bill became a part of the overlapping, half-way inconsistent chapter on chattel mortgages still unrepealed when the Code first became effective in Kentucky. KRS 382.790. See also the study by the Legislative Research Commission made prior to adoption of the Code, recognizing the practical impossibility of the task of isolation for repeal all statutes which might potentially conflict with the Code provisions. Legislative Research Commission, Pub. No. 49, Analysis of Effects of Uniform Commercial Code on Kentucky Law, appendix II, at 299 (1957). This portion of the statute on chattel mortgages was among the statutes listed as "representative of those affected in varying degree by the adoption of the Code. Some of these statutes should be repealed, some amended and others left unchanged."

<sup>23</sup> Ky. Acts 1962, ch. 83, § 12, at 315 [transposing the provision to KRS 355.9-404(2)].

<sup>24</sup> Uniform Commercial Code, 1958 Official Text (Joint Committee on Continuing Legal Education, 1958). UCC §9-401. Recommendation to correct this defect was first made in Hatton, *Security Interests Under the Uniform Commercial Code*, 25 Ky. S.B.J. 105, 110 (1961); Whiteside & Lewis, *supra* note 5, at 82.

<sup>25</sup> Ky. Acts 1962, ch. 83, § 8, at 311, amending KRS 355.9-401(1).

<sup>26</sup> Although "farmer" is not defined, KRS 355.9-109 defines "farm products" as follows:

"Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment or inventory.

county where the goods are kept if the debtor is not a resident of Kentucky;<sup>27</sup> (2) if the farm products consist of crops, then the proper county in which to file is where the crops are growing or to be grown;<sup>28</sup> and (3) in the case of all other types of collateral (which may include inventory, equipment, documents, chattel paper, accounts receivable and general intangibles) filing of the financing statement is properly made (a) in the office of the County Court Clerk in the county of the debtor's residence if the debtor is a resident of Kentucky, or (b) in the county of the debtor's principal place of business if the debtor is not a resident of Kentucky but has a principal place of business in Kentucky, or (c) in the office of the Secretary of State in Frankfort if the debtor is non-resident and does not have a principal place of business in Kentucky.<sup>29</sup> This new law by its explicit provisions should clear up most of the problems as to the proper place for filing. It should be borne in mind that even though filing is made in an improper place, if made in good faith, it is nevertheless effective with regard to any person with knowledge of the financing statement and with regard to any collateral as to which the filing was in compliance with the statute.<sup>30</sup>

Let us assume that the debtor with regard to collateral consisting of inventory or accounts receivable is a corporation rather than an individual debtor, as would frequently be the case. Some problems may remain unanswered. If the corporate debtor has a principal place of business within Kentucky, the county where that business is located is the proper county in which to file the financing statement whether or not the corporation is incorporated in Kentucky. It may also be necessary to file in the state where the corporation is incorporated. If, however, the debtor corporation is incorporated in Kentucky but has its principal place of business in another state it is probable that filing should be according to the laws governing there, assuming incorporation under the Kentucky corporation laws did not make the corporation a "resident" of Franklin County, Kentucky, or the county where the corporation has an agent for service of process. Even

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<sup>27</sup> KRS 355.9-401(1)(a).

<sup>28</sup> KRS 355.9-401(1)(a).

<sup>29</sup> KRS 355.9-401(1)(c).

<sup>30</sup> KRS 355.9-401(2).

if the Kentucky incorporation made the debtor corporation a Kentucky resident, filing in both states is indicated.<sup>31</sup>

### MOTOR VEHICLES

In Kentucky there are special problems concerning the interrelationship of the filing provisions of the Code and the motor vehicle title registration law which present no difficulty in most states adopting the Code. By virtue of the Code provisions designed to integrate the Code with the certificate-of-title statutes, compliance with the latter provision is the exclusive way to perfect security interests in motor vehicles and the Code filing provisions do not apply.<sup>32</sup> The Code thus contemplates the possibility of an exclusive method of perfection under the adopting state's motor vehicle statute if the latter provides the necessary pathway by insuring notice through a system of notation on the title certificate. Otherwise it would seem to contemplate the alternative of an exclusive way of perfection under the Code filing provisions. It is difficult to justify a system requiring double perfection.

Double perfection, however, is the practical effect of the solution to the problem reached by the court in *Lincoln Bank & Trust Co. v. Queenan*<sup>33</sup> with regard to motor vehicles constituting consumer goods or equipment in the hands of the debtor. There must be compliance with *both* the filing requirements of the Code and the procedures for notation of liens under the motor vehicle registration statute. Several statutory provisions were cited by the court as leading inevitably to this result.<sup>34</sup> Though the court

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<sup>31</sup> For a discussion of the problem, see Hatton, *Security Interest Under the Uniform Commercial Code*, 25 Ky. S.B.J. 105, 110 (1961).

<sup>32</sup> KRS 355.9-302(3), (4).

<sup>33</sup> 344 S.W.2d 383 (Ky. 1961).

<sup>34</sup> The three provisions, showing an intention that Code filing in addition to notation on the registration receipt was intended, were:

(1) "The lien instrument referred to in 186.195 shall be filed in the same manner as financing statements are required to be filed by KRS Chapter 355" (KRS 382.740, repealed by Ky. Acts 1962, ch. 83, §21, at 326);

(2) "If the property intended as collateral is consumer goods at the time the financing statement required by KRS 355.9-402 is filed, and if the property is an automobile (KRS 382.770, repealed in 1962 and placed in the Code requirement for financing statements, Ky. Acts 1962, ch. 83, §10, §21, at 312, 326).

(3) "Whenever a lien instrument affecting a motor vehicle is presented to a county clerk for recording in any county other than the one in which the motor vehicle is registered" [KRS 186.195(e)].

recognized that *perfection* of a security interest in a registered motor vehicle is accomplished by filing the financing statement under the Code, just as would be done for other property, the court found a way to put teeth in the lien notation statute<sup>35</sup> through its interpretation that the county clerk may refuse to file the financing statement until the lien is noted upon the registration receipt.<sup>36</sup>

The 1962 legislation mirrors the dual compliance result of the *Queenan* case by amending KRS 186.195, the provision which requires the notation of security interests in motor vehicles on the registration receipt. Throughout the section the words "financing statement" are substituted for the former words "lien instrument" in the description of what must be presented, together with the registration receipt showing the security interest, to the county clerk for "recording."<sup>37</sup> It is clear that there must be filed with the clerk both the registration receipt showing the security interest and the financing statement under article 9. The 1962 change in the language of KRS 355.9-402, containing the formal requirement for a filed financing statement, likewise shows an attempt to shoulder up the dual requirement of the *Queenan* case<sup>38</sup> that the financing statement be filed with the appropriate fees in addition to the notation of lien. Language is added to KRS 355.9-402 to the effect that the "chattel mortgage or other instrument" referred to in the motor vehicle law shall be deemed to mean financing statements to be filed under article 9, ignoring the fact that references to chattel mortgages in such law have now been eliminated.

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<sup>35</sup> KRS 186.195.

<sup>36</sup> *Lincoln Bank and Trust Company v. Queenan*, 344 S.W.2d 383, 387 (Ky. 1961). The court recognized that filing under the Code was the act which theoretically perfects the security interest. Nevertheless, the court's upholding the clerk's right to refuse to allow filing until there has been compliance with the motor vehicle lien notation statute (KRS 185.195) means that both steps must be complied with in order to have effective security in motor vehicles in most cases. It is conceivable that a financing statement might occasionally be allowed to be filed by a clerk without compliance with the lien notation requirement. In a previous article, *Whiteside & Lewis, supra* note 5, at 74, n.52, an example of when this might happen is mentioned in connection with the situation where there is a financing statement broad enough to cover after-acquired equipment of the debtor and the debtor subsequently acquires a new delivery truck which he registers in his own name without notation of any security interest on the registration receipt. The security interest in the truck is perfected and compliance with the motor vehicle law has not been assured.

<sup>37</sup> KRS 186.195 (1), (3), (5).

<sup>38</sup> *Lincoln Bank v. Queenan*, 344 S.W.2d 383 (Ky. 1961).

It is again submitted that a preferable solution would have been a careful amendment of KRS 186.195 to provide an exclusive method for perfecting security interests in registered motor vehicles. Kentucky's need for a full certificate-of-title law for motor vehicles, as well as the chief obstacles to enactment of such a law, have already been pointed out.<sup>39</sup>

An important exception to the dual compliance requirement was made in the *Queenan* interpretation. If motor vehicles constitute part of a dealer's inventory for sale the provisions of the motor vehicle laws do not apply and filing under article 9 of the Code remains the exclusive way to perfect the security interest. The court reasoned that the provisions of KRS 382.675 (relating to registration of motor vehicles prerequisite to filing of the security interest) and KRS 186.195 (requiring the notation of liens on copies of the registration receipt in the owner's hands and on file with the clerk) had no application to security interests in inventory vehicles, thus preserving the intent of the Code to provide a simple one-time filing for a running series of transactions so common in the case of floor-plan financing.<sup>40</sup> The opinion applies not only to new car inventory, including dealers demonstrator cars, but by the court's language to used car inventory as well.<sup>41</sup>

This holding is unaffected by the 1962 amendment. The addition of the words "required to be registered for use on the highway" following the words "motor vehicle" in the statute making registration prerequisite to the recording of an "instrument conveying or reserving a security interest" therein seems to be an inept attempt to amend the statute in conformity with the decision.<sup>42</sup> This statute, it has been previously pointed out, does not serve any useful purpose. It is cast in the old chattel mortgage rather than the Code terminology when it refers to the "recording" of instruments conveying or reserving a security interest.<sup>43</sup>

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<sup>39</sup> See Kripke, *supra* note 2, at 393; Whiteside & Lewis, *supra* note 5, at 76 n.54; Comment, 70 Yale L.J. 995 (1961). The chief obstacle to adequate title registration comes from pressures from the county clerks for a local, fee-scheduled filing process. See Louisville Courier Journal, June 18, 1961, §4, p. 1.

<sup>40</sup> *Lincoln Bank v. Queenan*, 344 S.W.2d 383, 387 (Ky. 1961); Kripke, *Kentucky Modernizes the Law of Chattel Security*, 48 Ky. L.J. 369, 388 (1960).

<sup>41</sup> 344 S.W.2d at 387; Kripke, *supra* note 40, at 388.

<sup>42</sup> KRS 382.675, as amended, Ky. Acts 1962, ch. 83, §17, at 320.

<sup>43</sup> The provision first appeared in Ky. Acts 1958, ch. 82, amending KRS 382.675.

It is now the only unrepealed section remaining in the chapter on "conveyances and encumbrances" dealing with chattel mortgages. Its complete repeal has been recommended.<sup>44</sup> Though failure to repeal is unfortunate, the addition of the words "required to be registered for use on the highway" amounts to recognition of the fact that KRS 382.675 does not apply to new car inventory and does no harm in regard to used car inventory since the registration of used cars has already taken place by the time they become inventory.<sup>45</sup>

The 1962 amendment adopts the changes made in the 1958 Official Text of the Uniform Commercial Code in regard to assignments of security interests.<sup>46</sup> However, when the assignment is of a security interest in a motor vehicle, the new bill inadvertently perpetuates an unfortunate mistake which it was previously hoped would be corrected.<sup>47</sup> It will be recalled that the uniform provision contemplates permissive filing of a perfected security interest, providing in section 9-405 that a secured party may make his assignment of record either by indorsement on the financing statement or by filing a separate written statement of assignment.<sup>48</sup> Although of possible benefit to all interested parties by publicizing information of the assignment, the drafters' comments make clear that filing the assignment is not a condition to continuing the perfected status of the security interest.<sup>49</sup> In contrast to the Code, the motor vehicle legislation, originally enacted in 1960 and reenacted in 1962, contains a mandatory requirement that the statement of assignment "shall" in addition to notation of the fact of assignment on the registration receipt, be filed "within thirty days of the assignment."<sup>50</sup> The statute, however, goes on to provide that the statement of assignment "shall be governed" by the Code provision on assignment,<sup>51</sup> which happens

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<sup>44</sup> Whiteside & Lewis, *supra* note 5.

<sup>45</sup> For a discussion of used car inventory, see Whiteside & Lewis, 50 Ky. L.J. 65, 71-72 (1961).

<sup>46</sup> UCC §9-405.

<sup>47</sup> See generally Whiteside & Lewis, *supra* note 5, at 76-79 (1961).

<sup>48</sup> See UCC §9-405. The purpose of the changes in the 1958 text was merely that of clarification, separating the provisions concerning the indication of assignment in the financing statement from the provisions for a separate instrument of assignment, making clear that only one filing fee is payable when the assignment is indicated on the financing statement. Uniform Laws Annotated (1958 Supp. to Uniform Commercial Code, 1957 Official Text).

<sup>49</sup> See UCC §9-405, comment.

<sup>50</sup> KRS 186.195(4)(a).

<sup>51</sup> Referring specifically to KRS 355.9-405.

to be permissive. Thus the 1962 Legislature perpetuated the same ambiguity which appeared in the 1960 legislation, purporting to establish a mandatory requirement for compliance with a Code provision which is permissive and demands no compliance. An argument has already been made that this ambiguity in the motor vehicle legislation indicates a misunderstanding of the Code requirements rather than a clear intention to modify the Code and that the Code therefore should prevail, resulting in permissive filing.<sup>52</sup> The startling fact is that, after this defect in the 1960 legislation (created by the Legislature after adoption of the Code) was pointed out, the 1962 Legislature nevertheless has perpetuated the same ambiguity by enacting conflicting provisions simultaneously and in the same statute.

Summarizing the requirements for perfection of security in motor vehicles in Kentucky, when motor vehicles constitute dealers' inventory, filing under the Code provisions is the only requirement, the lien notation procedure under the motor vehicle registration law having no application. But if the motor vehicles financed are part of the debtor's equipment or consumer goods in his hands, compliance with both the procedure for notation of the lien on the registration receipt<sup>53</sup> and filing a financing statement under the Code is required. The proper place for filing is of course determined by the classification under Code definitions according to the use to which the particular vehicles are put. Specifically if the vehicles are consumer goods or equipment used in farming operations (as defined in KRS ch. 355, art. 9), filing must be made (a) in the County Clerk's office where the debtor is resident or (b) if the debtor is not a resident of Kentucky in the County Clerk's office where the vehicles are registered.<sup>54</sup> If the vehicles constitute inventory or equipment used in debtor's business (as these terms are defined)<sup>55</sup> filing is made (a) in the county of the debtor's residence if he is a resident of Kentucky, or

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<sup>52</sup> See generally Whiteside & Lewis, *supra* note 5, at 78.

<sup>53</sup> Prescribed in KRS 186.195. Note that this procedure insures notation on the registration receipt in possession of the owner as well as that on file in the county clerk's office where the vehicle is registered.

<sup>54</sup> While KRS 355.9-401(1), the Uniform Commercial Code provision as enacted in Kentucky, says where the "goods are kept," this should be read in the case of motor vehicles to mean the place where the vehicle is registered. KRS 186.195(2), (3), insure that the notation of lien upon the registration receipt, as well as the financing statement, should be sent to the county clerk where the vehicle is registered.

<sup>55</sup> KRS 355.9-109(2), (4).

(b) in the county of the debtor's principal place of business within Kentucky if the debtor is not a resident of Kentucky, or  
(c) in the Secretary of State's office if the debtor is not a resident and has no principal place of business within Kentucky<sup>56</sup>

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In summary the 1962 legislation (1) achieves a very desirable reform in updating the Kentucky's Uniform Commercial Code to correspond with the latest draft by its sponsors; (2) repeals most of the prior inconsistent legislation not discovered at the time of the first enactment of the Code in Kentucky; (3) codifies the holdings in the *Queenan* case, both with regard to motor vehicles constituting inventory and to those constituting equipment or consumer goods; (4) fills some gaps to remedy the defective phrasing as to proper places for filing financing statements in different situations; and (5) perpetuates and adds to the Code itself several additional requirements for filing enacted in Kentucky after the Code was adopted and not to be found in other states which have adopted the Code.

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<sup>56</sup> KRS 355.9-401(1)(c).