SB978 Enrolled LRB9205797WHcs

- 1 AN ACT concerning business transactions.
- 2 Be it enacted by the People of the State of Illinois,
- 3 represented in the General Assembly:
- 4 Section 5. The Uniform Commercial Code is amended by
- 5 changing Sections 9-301, 9-310, 9-312, 9-314, and 9-322 and
- 6 adding Sections 9-107.1, 9-306.1, and 9-329.1 as follows:
- 7 (810 ILCS 5/9-107.1 new)
- 8 <u>Sec. 9-107.1. Control of Beneficial Interest in Illinois</u>
- 9 <u>Land Trust.</u>
- 10 <u>(a) Requirements for Control. A secured party has</u>
- 11 <u>control of the beneficial interest in an Illinois land trust</u>
- 12 <u>if:</u>
- 13 (1) the secured party shall have transmitted to the
- 14 <u>trustee for the trust a record authenticated by the</u>
- debtor that contains a collateral assignment by the
- debtor of, or the grant of a security interest in, a
- 17 <u>beneficial interest in the trust; and</u>
- 18 (2) in an authenticated record, the trustee for
- 19 <u>the trust has accepted the collateral assignment or</u>
- 20 <u>security agreement.</u>
- 21 (b) Debtor's right to direct disposition and proceeds. A
- 22 <u>secured party that has satisfied subsection (a) has control,</u>
- 23 even if the debtor retains, subject to the terms and
- 24 <u>conditions of the collateral assignment or security</u>
- 25 agreement, the power of direction of the trustee and the
- 26 <u>right to receive the rents, income and profits thereof.</u>
- 27 (810 ILCS 5/9-301) (from Ch. 26, par. 9-301)
- 28 (Text of Section before amendment by P.A. 91-893)
- 29 Sec. 9-301. Persons Who Take Priority Over Unperfected
- 30 Security Interests; Rights of "Lien Creditor".

- 1 (1) Except as otherwise provided in subsection (2), an
- 2 unperfected security interest is subordinate to the rights of
- 3 (a) persons entitled to priority under Section 4 9-312;
- 5 (b) a person who becomes a lien creditor before the 6 security interest is perfected;

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- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
 - (d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected;
- provided, however, that an unperfected security interest 20 21 shall take priority over the rights of a lien creditor if (i) the lien creditor is a trustee or receiver of a state or 22 23 federally chartered financial institution acting furtherance of its supervisory authority over the financial 24 25 institution and (ii) a security interest is granted by the financial institution to secure a deposit of public funds 26 with the financial institution or a repurchase agreement with 27 the financial institution pursuant to the Government 28 Securities Act of 1986, as amended. 29
- 30 (2) If the secured party files with respect to a 31 purchase money security interest before or within 20 days 32 after the debtor receives possession of the collateral, he 33 takes priority over the rights of a transferee in bulk or of 34 a lien creditor which arise between the time the security

- 1 interest attaches and the time of filing.
- 2 (3) A "lien creditor" means a creditor who has acquired
- 3 a lien on the property involved by attachment, levy or the
- 4 like and includes an assignee for benefit of creditors from
- 5 the time of assignment, and a trustee in bankruptcy from the
- 6 date of the filing of the petition or a receiver in equity
- 7 from the time of appointment.
- 8 (4) A person who becomes a lien creditor while a
- 9 security interest is perfected takes subject to the security
- 10 interest only to the extent that it secures advances made
- 11 before he becomes a lien creditor or within 45 days
- 12 thereafter or made without knowledge of the lien or pursuant
- to a commitment entered into without knowledge of the lien.
- 14 (Source: P.A. 89-364, eff. 1-1-96; 90-696, eff. 8-7-98.)
- 15 (Text of Section after amendment by P.A. 91-893)
- 16 Sec. 9-301. Law governing perfection and priority of
- 17 security interests. Except as otherwise provided in Sections
- 18 9-303 through 9-306.1 9-306, the following rules determine
- 19 the law governing perfection, the effect of perfection or
- 20 nonperfection, and the priority of a security interest in
- 21 collateral:
- 22 (1) Except as otherwise provided in this Section,
- while a debtor is located in a jurisdiction, the local
- law of that jurisdiction governs perfection, the effect
- of perfection or nonperfection, and the priority of a
- 26 security interest in collateral.
- 27 (2) While collateral is located in a jurisdiction,
- the local law of that jurisdiction governs perfection,
- 29 the effect of perfection or nonperfection, and the
- 30 priority of a possessory security interest in that
- 31 collateral.
- 32 (3) Except as otherwise provided in paragraph (4),
- while negotiable documents, goods, instruments, money, or
- tangible chattel paper is located in a jurisdiction, the

- local law of that jurisdiction governs:
- 2 (A) perfection of a security interest in the
- 3 goods by filing a fixture filing;
- 4 (B) perfection of a security interest in
- 5 timber to be cut; and
- 6 (C) the effect of perfection or nonperfection
- 7 and the priority of a nonpossessory security
- 8 interest in the collateral.
- 9 (4) The local law of the jurisdiction in which the
- 10 wellhead or minehead is located governs perfection, the
- 11 effect of perfection or nonperfection, and the priority
- of a security interest in as-extracted collateral.
- 13 (Source: P.A. 90-696, eff. 8-7-98; 91-893, eff. 7-1-01.)
- 14 (810 ILCS 5/9-306.1 new)
- Sec. 9-306.1. Law Governing Perfection and Priority of
- 16 <u>Collateral Assignments of Beneficial Interests in Illinois</u>
- 17 <u>Land Trusts. The local law of the State of Illinois governs</u>
- 18 perfection, the effect of perfection or nonperfection, and
- 19 <u>the priority of a collateral assignment of, or other security</u>
- 20 <u>interest in, a beneficial interest in an Illinois land trust.</u>
- 21 This Section implements the important interest of this State
- 22 <u>in matters associated with the administration of Illinois</u>
- 23 <u>land trusts created for the principal purpose of owning an</u>
- 24 <u>interest in Illinois land and the regulation of restrictions</u>
- on the transfer of beneficial interests in, and of the power
- of appointments under, such trusts.
- 27 (810 ILCS 5/9-310) (from Ch. 26, par. 9-310)
- 28 (Text of Section before amendment by P.A. 91-893)
- 29 Sec. 9-310. Priority of certain liens arising by
- 30 operation of law.
- 31 When a person in the ordinary course of his business
- 32 furnishes services or materials with respect to goods subject

- 1 to a security interest, a lien upon goods in the possession
- 2 of such person given by statute or rule of law for such
- 3 materials or services takes priority over a perfected
- 4 security interest unless the lien is statutory and the
- 5 statute expressly provides otherwise.
- 6 (Source: Laws 1961, p. 2101.)
- 7 (Text of Section after amendment by P.A. 91-893)
- 8 Sec. 9-310. When filing required to perfect security
- 9 interest or agricultural lien; security interests and
- 10 agricultural liens to which filing provisions do not apply.
- 11 (a) General rule: perfection by filing. Except as
- otherwise provided in subsection (b) and Section 9-312(b), a
- 13 financing statement must be filed to perfect all security
- 14 interests and agricultural liens.
- 15 (b) Exceptions: filing not necessary. The filing of a
- 16 financing statement is not necessary to perfect a security
- 17 interest:
- 18 (1) that is perfected under Section 9-308(d), (e),
- 19 (f), or (g);
- 20 (2) that is perfected under Section 9-309 when it
- 21 attaches;
- 22 (3) in property subject to a statute, regulation,
- or treaty described in Section 9-311(a);
- 24 (4) in goods in possession of a bailee which is
- perfected under Section 9-312(d)(1) or (2);
- 26 (5) in certificated securities, documents, goods,
- or instruments which is perfected without filing or
- possession under Section 9-312(e), (f), or (g);
- 29 (6) in collateral in the secured party's possession
- 30 under Section 9-313;
- 31 (7) in a certificated security which is perfected
- 32 by delivery of the security certificate to the secured
- party under Section 9-313;
- 34 (8) in deposit accounts, electronic chattel paper,

- 1 investment property, or letter-of-credit rights, or
- 2 <u>beneficial interests in Illinois land trusts</u> which is
- 3 perfected by control under Section 9-314;
- 4 (9) in proceeds which is perfected under Section
- 5 9-315; or
- 6 (10) that is perfected under Section 9-316.
- 7 (c) Assignment of perfected security interest. If a
- 8 secured party assigns a perfected security interest or
- 9 agricultural lien, a filing under this Article is not
- 10 required to continue the perfected status of the security
- 11 interest against creditors of and transferees from the
- 12 original debtor.
- 13 (Source: P.A. 91-893, eff. 7-1-01.)
- 14 (810 ILCS 5/9-312) (from Ch. 26, par. 9-312)
- 15 (Text of Section before amendment by P.A. 91-893)
- 16 Sec. 9-312. Priorities Among Conflicting Security
- 17 Interests in the Same Collateral.
- 18 (1) The rules of priority stated in other Sections of
- 19 this Part and in the following Sections shall govern when
- 20 applicable: Section 4-210 with respect to the security
- 21 interests of collecting banks in items being collected,
- 22 accompanying documents and proceeds; Section 9-103 on
- 23 security interests related to other jurisdictions; Section
- 9-114 on consignments; Section 9-115 on security interests in
- investment property.
- 26 (2) A perfected security interest in crops for new value
- 27 given to enable the debtor to produce the crops during the
- 28 production season and given not more than three months before
- 29 the crops become growing crops by planting or otherwise takes
- 30 priority over an earlier perfected security interest to the
- 31 extent that such earlier interest secures obligations due
- 32 more than six months before the crops become growing crops by
- 33 planting or otherwise, even though the person giving new

- 1 value had knowledge of the earlier security interest.
- 2 (3) A perfected purchase money security interest in
- 3 inventory has priority over a conflicting security interest
- 4 in the same inventory and also has priority in identifiable
- 5 cash proceeds received on or before the delivery of the
- 6 inventory to a buyer if
- 7 (a) the purchase money security interest is
- 8 perfected at the time the debtor receives possession of
- 9 the inventory; and
- 10 (b) the purchase money secured party gives
 11 notification in writing to the holder of the conflicting
- 12 security interest if the holder had filed a financing
- 13 statement covering the same types of inventory (i) before
- the date of the filing made by the purchase money secured
- party, or (ii) before the beginning of the 21 day period
- where the purchase money security interest is temporarily
- 17 perfected without filing or possession (subsection (5) of
- 18 Section 9-304); and
- 19 (c) the holder of the conflicting security interest
- 20 receives the notification within 5 years before the
- 21 debtor receives possession of the inventory; and
- 22 (d) the notification states that the person giving
- 23 the notice has or expects to acquire a purchase money
- security interest in inventory of the debtor, describing
- such inventory by item or type.
- 26 (4) A purchase money security interest in collateral
- 27 other than inventory has priority over a conflicting security
- 28 interest in the same collateral or its proceeds if the
- 29 purchase money security interest is perfected at the time the
- 30 debtor receives possession of the collateral or within 20
- 31 days thereafter.
- 32 (5) In all cases not governed by other rules stated in
- 33 this Section (including cases of purchase money security
- interests which do not qualify for the special priorities set

- 1 forth in subsections (3) and (4) of this Section), priority
- 2 between conflicting security interests in the same collateral
- shall be determined according to the following rules: 3
- 4 (a) Conflicting security interests rank according
- to priority in time of filing or perfection. Priority 5
- dates from the time a filing is first made covering the 6
- 7 collateral or the time the security interest is first
- perfected, whichever is earlier, provided that there is 8
- 9 no period thereafter when there is neither filing nor
- perfection. 10
- 11 (b) So long as conflicting security interests are
- 12 unperfected, the first to attach has priority.
- For the purposes of subsection (5) a date of filing 13
- or perfection as to collateral is also a date of filing or 14
- 15 perfection as to proceeds.
- 16 (7) If future advances are made while a security
- interest is perfected by filing, the taking of possession or 17
- under Section 9-115 or 9-116 on investment property, the 18
- 19 security interest has the same priority for the purposes of
- subsection (5) with respect to the future advances as it does 20
- 21 with respect to the first advance. If a commitment is made
- 22 before or while the security interest is so perfected, the
- 23 security interest has the same priority with respect to
- advances made pursuant thereto. In other cases a perfected 24
- security interest has priority from the date the advance is
- 26 made.

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- (Source: P.A. 89-364, eff. 1-1-96.) 27
- 28 (Text of Section after amendment by P.A. 91-893)
- Sec. 9-312. Perfection of security interests in chattel 29
- deposit accounts, documents, goods covered by 30
- documents, instruments, investment property, letter-of-credit 31
- 32 rights, and money; perfection by permissive filing; temporary
- 33 perfection without filing or transfer of possession.
- (a) Perfection by filing permitted. A security interest 34

- 1 in chattel paper, negotiable documents, instruments,
- 2 <u>beneficial interests in Illinois land trusts</u>, or investment
- 3 property may be perfected by filing.
- 4 (b) Control or possession of certain collateral. Except
- 5 as otherwise provided in Section 9-315(c) and (d) for
- 6 proceeds:
- 7 (1) a security interest in a deposit account may be
- 8 perfected only by control under Section 9-314;
- 9 (2) and except as otherwise provided in Section 10 9-308(d), a security interest in a letter-of-credit right
- may be perfected only by control under Section 9-314; and
- 12 (3) a security interest in money may be perfected
- only by the secured party's taking possession under
- 14 Section 9-313.
- 15 (c) Goods covered by negotiable document. While goods
- 16 are in the possession of a bailee that has issued a
- 17 negotiable document covering the goods:
- 18 (1) a security interest in the goods may be
- 19 perfected by perfecting a security interest in the
- document; and
- 21 (2) a security interest perfected in the document
- has priority over any security interest that becomes
- 23 perfected in the goods by another method during that
- 24 time.
- 25 (d) Goods covered by nonnegotiable document. While
- 26 goods are in the possession of a bailee that has issued a
- 27 nonnegotiable document covering the goods, a security
- interest in the goods may be perfected by:
- 29 (1) issuance of a document in the name of the
- 30 secured party;
- 31 (2) the bailee's receipt of notification of the
- 32 secured party's interest; or
- 33 (3) filing as to the goods.
- 34 (e) Temporary perfection: new value. A security

- 1 interest in certificated securities, negotiable documents, or
- 2 instruments is perfected without filing or the taking of
- 3 possession for a period of 20 days from the time it attaches
- 4 to the extent that it arises for new value given under an
- 5 authenticated security agreement.
- 6 (f) Temporary perfection: goods or documents made
- 7 available to debtor. A perfected security interest in a
- 8 negotiable document or goods in possession of a bailee, other
- 9 than one that has issued a negotiable document for the goods,
- 10 remains perfected for 20 days without filing if the secured
- 11 party makes available to the debtor the goods or documents
- 12 representing the goods for the purpose of:
- 13 (1) ultimate sale or exchange; or
- 14 (2) loading, unloading, storing, shipping,
- transshipping, manufacturing, processing, or otherwise
- dealing with them in a manner preliminary to their sale
- or exchange.
- 18 (g) Temporary perfection: delivery of security
- 19 certificate or instrument to debtor. A perfected security
- 20 interest in a certificated security or instrument remains
- 21 perfected for 20 days without filing if the secured party
- delivers the security certificate or instrument to the debtor
- for the purpose of:
- 24 (1) ultimate sale or exchange; or
- 25 (2) presentation, collection, enforcement, renewal,
- or registration of transfer.
- 27 (h) Expiration of temporary perfection. After the
- 28 20-day period specified in subsection (e), (f), or (g)
- 29 expires, perfection depends upon compliance with this
- 30 Article.
- 31 (Source: P.A. 91-893, eff. 7-1-01.)
- 32 (810 ILCS 5/9-314) (from Ch. 26, par. 9-314)
- 33 (Text of Section before amendment by P.A. 91-893)

- 1 Sec. 9-314. Accessions.
- 2 (1) A security interest in goods which attaches before
- 3 they are installed in or affixed to other goods takes
- 4 priority as to the goods installed or affixed (called in this
- 5 section "accessions") over the claims of all persons to the
- 6 whole except as stated in subsection (3) and subject to
- 7 Section 9--315(1).
- 8 (2) A security interest which attaches to goods after
- 9 they become part of a whole is valid against all persons
- 10 subsequently acquiring interests in the whole except as
- 11 stated in subsection (3) but is invalid against any person
- 12 with an interest in the whole at the time the security
- 13 interest attaches to the goods who has not in writing
- 14 consented to the security interest or disclaimed an interest
- in the goods as part of the whole.
- 16 (3) The security interests described in subsections (1)
- 17 and (2) do not take priority over
- 18 (a) a subsequent purchaser for value of any
- interest in the whole; or
- 20 (b) a creditor with a lien on the whole
- 21 subsequently obtained by judicial proceedings; or
- (c) a creditor with a prior perfected security
- interest in the whole to the extent that he makes subsequent
- 24 advances if the subsequent purchase is made, the lien by
- judicial proceedings obtained or the subsequent advance under
- 26 the prior perfected security interest is made or contracted
- 27 for without knowledge of the security interest and before it
- is perfected. A purchaser of the whole at a foreclosure sale
- 29 other than the holder of a perfected security interest
- 30 purchasing at his own foreclosure sale is a subsequent
- 31 purchaser within this Section.
- 32 (4) When under subsections (1) or (2) and (3) a secured
- 33 party has an interest in accessions which has priority over
- 34 the claims of all persons who have interests in the whole, he

- 1 may on default subject to the provisions of Part 5 remove his
- 2 collateral from the whole but he must reimburse any
- 3 encumbrancer or owner of the whole who is not the debtor and
- 4 who has not otherwise agreed for the cost of repair of any
- 5 physical injury but not for any diminution in value of the
- 6 whole caused by the absence of the goods removed or by any
- 7 necessity for replacing them. A person entitled to
- 8 reimbursement may refuse permission to remove until the
- 9 secured party gives adequate security for the performance of
- 10 this obligation.
- 11 (Source: Laws 1961, p. 2101.)
- 12 (Text of Section after amendment by P.A. 91-893)
- 13 Sec. 9-314. Perfection by control.
- 14 (a) Perfection by control. A security interest in
- investment property, deposit accounts, <u>electronic chattel</u>
- 16 paper, letter-of-credit rights, or beneficial interests in
- 17 <u>Illinois land trusts</u> electronic--chattel--paper may be
- 18 perfected by control of the collateral under Section 9-104,
- 9-105, 9-106, or 9-107, or 9-107.1.
- 20 (b) Specified collateral: time of perfection by
- 21 control; continuation of perfection. A security interest in
- 22 deposit accounts, electronic chattel paper, er
- 23 letter-of-credit rights, or beneficial interests in Illinois
- 24 <u>land trusts</u> is perfected by control under Section 9-104,
- 9-105, θr 9-107, or 9-107.1 when the secured party obtains
- 26 control and remains perfected by control only while the
- 27 secured party retains control.
- 28 (c) Investment property: time of perfection by control;
- 29 continuation of perfection. A security interest in
- 30 investment property is perfected by control under Section
- 31 9-106 from the time the secured party obtains control and
- 32 remains perfected by control until:
- 33 (1) the secured party does not have control; and
- 34 (2) one of the following occurs:

1	(A)	if	the	collate	ral	is	a	certificat	ed
2	security,	the	e de	btor has	or	acqui	res	possession	of
3	the securi	ity o	certi	ficate;					

- 4 (B) if the collateral is an uncertificated 5 security, the issuer has registered or registers the 6 debtor as the registered owner; or
- 7 (C) if the collateral is a security 8 entitlement, the debtor is or becomes the 9 entitlement holder.
- 10 (Source: P.A. 91-893, eff. 7-1-01.)
- 11 (810 ILCS 5/9-322)
- 12 (This Section may contain text from a Public Act with a
- delayed effective date)
- 14 Sec. 9-322. Priorities among conflicting security
- interests in and agricultural liens on same collateral.
- 16 (a) General priority rules. Except as otherwise
- 17 provided in this Section, priority among conflicting security
- 18 interests and agricultural liens in the same collateral is
- 19 determined according to the following rules:
- 20 (1) Conflicting perfected security interests and
 21 agricultural liens rank according to priority in time of
 22 filing or perfection. Priority dates from the earlier of
 23 the time a filing covering the collateral is first made
 24 or the security interest or agricultural lien is first
 25 perfected, if there is no period thereafter when there is
 26 neither filing nor perfection.
- 27 (2) A perfected security interest or agricultural 28 lien has priority over a conflicting unperfected security 29 interest or agricultural lien.
- 30 (3) The first security interest or agricultural
 31 lien to attach or become effective has priority if
 32 conflicting security interests and agricultural liens are
 33 unperfected.

- 1 (b) Time of perfection: proceeds and supporting 2 obligations. For the purposes of subsection (a)(1):
- 3 (1) the time of filing or perfection as to a 4 security interest in collateral is also the time of 5 filing or perfection as to a security interest in 6 proceeds; and
- 7 (2) the time of filing or perfection as to a 8 security interest in collateral supported by a supporting 9 obligation is also the time of filing or perfection as to 10 a security interest in the supporting obligation.
- 11 (c) Special priority rules: proceeds and supporting
 12 obligations. Except as otherwise provided in subsection (f),
 13 a security interest in collateral which qualifies for
 14 priority over a conflicting security interest under Section
 15 9-327, 9-328, 9-329, 9-329.1, 9-330, or 9-331 also has
 16 priority over a conflicting security interest in:
- 17 (1) any supporting obligation for the collateral;
 18 and
- 19 (2) proceeds of the collateral if:
- 20 (A) the security interest in proceeds is 21 perfected;
- 22 (B) the proceeds are cash proceeds or of the 23 same type as the collateral; and
- (C) in the case of proceeds that are proceeds
 of proceeds, all intervening proceeds are cash
 proceeds, proceeds of the same type as the
 collateral, or an account relating to the
 collateral.
- (d) First-to-file priority rule for certain collateral.

 Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights, or beneficial interests in Illinois land trusts is perfected by

- 1 a method other than filing, conflicting perfected security
- 2 interests in proceeds of the collateral rank according to
- 3 priority in time of filing.
- 4 (e) Applicability of subsection (d). Subsection (d)
- 5 applies only if the proceeds of the collateral are not cash
- 6 proceeds, chattel paper, negotiable documents, instruments,
- 7 investment property, <u>beneficial interests in Illinois land</u>
- 8 <u>trusts</u>, or letter-of-credit rights.
- 9 (f) Limitations on subsections (a) through (e).
- 10 Subsections (a) through (e) are subject to:
- 11 (1) subsection (g) and the other provisions of this
- 12 Part;
- 13 (2) Section 4-210 with respect to a security
- interest of a collecting bank;
- 15 (3) Section 5-118 with respect to a security
- interest of an issuer or nominated person; and
- 17 (4) Section 9-110 with respect to a security
- interest arising under Article 2 or 2A.
- 19 (g) Priority under agricultural lien statute. A
- 20 perfected agricultural lien on collateral has priority over a
- 21 conflicting security interest in or agricultural lien on the
- 22 same collateral if the statute creating the agricultural lien
- 23 so provides.
- 24 (Source: P.A. 91-893, eff. 7-1-01.)
- 25 (810 ILCS 5/9-329.1 new)
- Sec. 9-329.1. Priority of Security Interests in
- 27 <u>Beneficial Interest in an Illinois Land Trust. The following</u>
- 28 <u>rules govern priority among conflicting security interests in</u>
- 29 <u>the same beneficial interest in an Illinois land trust:</u>
- 30 (1) A security interest held by a secured party
- 31 <u>having control of the beneficial interest under Section</u>
- 32 <u>9-107.1 has priority to the extent of its control over a</u>
- 33 <u>conflicting security interest held by a secured party</u>

- 1 <u>that does not have control.</u>
- 2 (2) Security interests perfected by control under
- 3 <u>Section 9-314 rank according to priority in time of</u>
- 4 <u>obtaining control.</u>
- 5 Section 95. No acceleration or delay. Where this Act
- 6 makes changes in a statute that is represented in this Act by
- 7 text that is not yet or no longer in effect (for example, a
- 8 Section represented by multiple versions), the use of that
- 9 text does not accelerate or delay the taking effect of (i)
- 10 the changes made by this Act or (ii) provisions derived from
- 11 any other Public Act.