

HOUSE BILL 9

Relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including remittance transfers, under the Uniform Commercial Code and federal law

Sectional Analysis

Sections 1 and 2 address a needed change to Uniform Commercial Code, Article 4A to maintain coverage under state law for certain types of remittance of funds transfers in commercial transactions. Without the change, neither federal nor state law would apply to these transfers. It restores regulatory certainty and clarity necessary to prompt commerce.

Sections 3 through 7 update definitions in the Uniform Commercial Code, Secured Transactions (Article 9). The changes are necessary to update language on electronic signature for these transactions, to clarify that other records may serve as "certificates of title" if they are maintained as an alternative for indication of a security interest, and to introduce the term "public organic record" to reduce confusion as to which document must be consulted to locate the correct debtor name for a financing statement.

Section 8 makes technical amendments to set out the general test for the control of electronic chattel paper. Subsection (b) sets out a safe harbor that, if satisfied, establishes control under the general test in subsection (a).

Section 9 makes technical changes by recognizing in statute that designating a state of location of the registered organization, branch, or agency includes designating its main office, home office, or other comparable location. Previously this concept was contained in official comments to the Uniform Commercial Code, Article 9, but has been moved to the text in the interest of certainty.

Section 10 makes technical changes to conform to the revised definition of "certificate of title."

Section 11 relates to when a debtor changes location from one state to another. Under current law, the debtor has a four-month grace period to re-perfect filing in the new state as to the collateral it held before the move but it has no grace period as to collateral acquired after the move. **Section 11** would provide the same grace period for the after move acquired collateral that current law provides for pre-move collateral. **Section 14** makes conforming changes concerning priority of security interests created by a new debtor. **Section 22** makes a conforming change to implement the new debtor name rules.

Sections 12 and 13 make technical changes in language to conform to other provisions of Uniform Commercial Code, Article 9.

Sections 15 and 16 make clear that a secured party that takes an assignment of a payment intangible or promissory note as collateral for an obligation may take advantage of the remedies available under Uniform Commercial Code, Article 9.

Sections 17 through 19 provide greater clarity on the name of the debtor to be used in a financing statement for different types of debtors, such as registered organizations, trusts, decedent of estate, or individual debtors.

Section 20 makes technical changes to conform to the new rules governing individual debtor names on financing statements.

Section 21 makes a technical change to parallel other provisions of the section. The change is needed for ease of administration by filing offices.

Sections 22 through 24 change the term "correction statement" to "information statement" in order not to give the impression that a filing of the statement has a legal effect of correcting a problem. The changes also allow a secured party of record to file an information statement regarding a filed record if the secured party believes that the person that filed the record was not entitled to do so under Uniform Commercial Code, Article 9. Without this change only a debtor could file such a statement.

Section 25 clearly states what is current law, that in order for a secured party to record an affidavit to facilitate foreclosure on a mortgage serving as collateral for a promissory note in which the secured party has an interest, the secured party must state in the affidavit that the mortgagor is in default on the note.

Section 26 sets out an applicability provision for the Act.

Sections 27 through 33 set out transition provisions for the Act.

Section 34 gives instructions to the Department of Natural Resource on implementation of the act, especially concerning regulations and filing statements. **Section 36** provides an immediate effective date of these instructions.

Section 35 provides a savings clause for an action, case, or proceeding commenced before July 1, 2013.

Section 37 provides generally for an effective date of July 1, 2013, for the Act. All states are supposed to have this uniform effective date to avoid implementation issues across the states.

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