

HOUSE BILL REPORT

SSB 6186

As Passed House:
February 29, 2000

Title: An act relating to secured transactions, revising Article 9 of the uniform commercial code with conforming amendments and additions to other statutes.

Brief Description: Revising Article 9 of the Uniform Commercial Code.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Heavey, Johnson and Gardner).

Brief History:

Committee Activity:

Judiciary: 2/17/00, 2/25/00 [DP].

Floor Activity:

Passed House: 2/29/00, 97-0.

Brief Summary of Substitute Bill

- Adopts the revised Article 9 of the Uniform Commercial Code governing secured transactions, with changes recommended by the Washington Bar Association.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Edie Adams (786-7180).

Background:

The Uniform Commercial Code (UCC), organized in 11 articles, is a model code drafted by the National Conference of Commissioners on Uniform State Laws for the

purpose of providing a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have now adopted the UCC.

Article 9 of the UCC governs the creation and operation of security interests in personal property or fixtures. A security interest is the interest of a creditor in property of a debtor used to secure payment of a debt. Article 9 provides methods of creating and filing a security interest and the manner in which a security interest may be "perfected." Perfection of a security interest is the means by which a secured creditor obtains priority over other creditors who have a security interest in the same collateral. Article 9 also provides remedies and procedures in the event that a debtor defaults on an obligation.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) has proposed a revised Article 9 for adoption by the states. Revised Article 9 represents a substantial overhaul that expands the scope of the article, incorporates technological developments, and addresses issues not covered in the current Article 9. The NCCUSL has prepared Official Comments that explain the changes and the purposes and intents of the changes. The Washington State Bar Association (WSBA) reviewed the official version of revised Article 9 and recommends its adoption with some changes to better conform it to unique areas of Washington statutory or case law. The Washington Comments prepared by the WSBA explain these changes.

Summary of Bill:

Article 9 of the UCC is repealed and replaced with the revised UCC Article 9, with changes recommended by the WSBA. The revised Article 9 makes substantial changes to many aspects of secured transactions, including the scope of Article 9, perfection and filing requirements, priority rules, default and enforcement, and specific protections in consumer transactions.

Scope:

The scope of Article 9 is expanded to include security interests in forms of property not covered in the previous version, including deposit accounts, health care insurance receivables, credit card receivables, sales of payment intangibles and promissory notes, agricultural liens, consignments, and commercial tort claims.

Filing:

All filing of financing statements is at the location of the debtor, except for fixtures, timber, minerals, oil and gas. This replaces the previous rule that filing for tangible collateral occurs at the location of the collateral. A debtor that is a registered

company, such as a corporation, is located in the debtor's state of incorporation. A debtor who is an individual is located at his or her principal residence.

A simplified national form of financing statement, which is set forth in the text of the act, must be used. The debtor's signature is not needed on the financing statement, although the debtor must authorize the filing. The debtor's signature on the security agreement is deemed authorization to file a financing statement. In transactions other than consumer transactions, collateral can be described as "all property" of the debtor, rather than being specifically described. Documents previously required to be signed can now be "authenticated" or authorized electronically. Electronic filing is permitted.

A debtor may file a termination statement when a secured creditor fails to do so when required. A debtor may also file a correction statement if he or she believes the financing statement is inaccurate or wrongfully filed.

All filings are with the Department of Licensing unless local filing is required. Procedures governing the operations of the filing office are provided. Filings must be indexed within two business days of receipt, and information requests regarding filings must be answered within two business days. Rules governing the rejection and deletion of financing statements by the filing office are provided. The Department of Licensing is authorized to set filing fees and fees for responding to information requests.

Perfection and Priority:

Perfection and priority rules are provided for types of personal property not previously covered under the scope of Article 9 (deposit accounts, health care insurance receivables, credit card receivables, sales of payment intangibles and promissory notes, agricultural liens, consignments, and commercial tort claims).

Various other provisions regarding perfection and priority of security interests, including accessions and commingled goods, software, electronic chattel paper, transferred collateral, new debtors, and others are revised or added.

Default and Enforcement:

A secured party must give notice of the sale of collateral to the debtor and all other secured creditors at least 10 days in advance of the sale in the case of default in a commercial transaction. If the debtor is a consumer, "reasonable" notice must be given. Whether notice is reasonable is a question of fact. The secured party has the burden of proving that any foreclosure sale was commercially reasonable.

A statutory safe harbor form is provided for giving notice to the debtor of a public or private sale. A secured party may accept collateral in satisfaction, or partial satisfaction, of the debt even if the secured party does not have possession of the collateral.

A secured party that disposes of collateral automatically gives title warranties unless disclaimed.

Consumer Transactions:

Consumer transactions not exceeding \$40,000 for personal use are given protections not available for larger or strictly commercial transactions.

A consumer goods security agreement must contain a description of the collateral that is more specific than "all consumer goods." A consumer in a consumer goods transaction is entitled to additional information in the notice of foreclosure sale. A secured party who seeks a deficiency from a consumer in a consumer goods transaction must provide an explanation of the calculation of the deficiency sought.

Miscellaneous:

Statutory damages are provided for a debtor against a secured party or other person who fails to comply with specific duties, including failing to comply with a request for accounting, filing a financing statement that is not authorized by the debtor, or failing to file a termination statement after request by a debtor.

The definition of "good faith" is amended to include "observance of reasonable commercial standards of fair dealing" in addition to honesty in fact.

"Authentication," as opposed to "signature," is authorized in most circumstances, allowing the use of electronic agreements.

Rules for transition to the revised Article 9 are provided. Conforming, related, and technical amendments are made to other provisions of the code.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2001.

Testimony For: The UCC is 50 years old. Changing business practices have led to the need for a major revision to Article 9. In addition, many questions have arisen

under the current law that courts in different states have resolved differently. The revision answers those questions and provides more procedure and certainty in the law. The NCCUSL spent many years drafting the revisions, with input from all aspects of the commercial world. The Official Comments prepared by NCCUSL explain the changes and the purposes and intents behind the changes. The WSBA studied the revisions and recommends changes to adapt the revisions to Washington law. The Washington Comments prepared by the WSBA explain those changes. It is important to enact this bill because uniformity in this area is needed. Enacting the bill now will give a transition period for affected parties.

Testimony Against: None.

Testified: Senator Heavey, prime sponsor; Stephen Sepinuck; Dan Hungate, Washington State Bar Association; Dan Ritter, Washington State Bar Association and Washington State Bankers Association; Jon Donnellan, Department of Licensing; and Bruce Konde, Washington State Bankers Association.