HOUSE BILL REPORT
ESHB 1492

As Passed Legislature

Title: An act relating to the Uniform Commercial Code Article 9A on secured transactions.

Brief Description: Concerning the Uniform Commercial Code Article 9A on secured transactions.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen and Rodne; by request of Uniform Laws Commission).

Brief History:
Committee Activity:
Judiciary: 2/2/11, 2/3/11, 2/10/11 [DPS].
Floor Activity:
Passed House: 3/1/11, 96-1.
Passed Senate: 4/5/11, 49-0.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Adopts revisions to Article 9A of the Uniform Commercial Code governing secured transactions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Minority Report: Do not pass. Signed by 1 member: Representative Eddy.

Staff: Edie Adams (786-7180).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Uniform Commercial Code (UCC), organized into 11 articles, is a model code drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for the purpose of providing a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted the UCC.

Article 9 of the UCC governs the creation and operation of security interests in various types of personal property and 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 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. There are different mechanisms for perfecting a security interest depending on the type of collateral involved. One common method of perfection is by the filing of a financing statement that indicates the debtor, the secured party, and the property subject to the security interest. Article 9 also provides remedies and procedures in the event that a debtor defaults on an obligation.

In 1998 the NCCUSL adopted revised Article 9, which was a substantial overhaul and expansion of the article. Washington enacted revised Article 9 in 2000, which is codified in state law as Article 9A. Last year, the NCCUSL adopted amendments to revised Article 9 and recommends that states adopt the amendments effective July 1, 2013. According to comments from the NCCUSL, the purpose of these latest amendments to Article 9 are to clarify areas of ambiguity, address problems that have arisen since adoption of the revised Article 9, and correct errors and conform provisions of the article to amendments to other articles of the UCC. In addition to amendments to some provisions of the official text of Article 9, the NCCUSL adopted revisions to the Official Comments for many provisions of Article 9 without amending the underlying text.

Summary of Engrossed Substitute Bill:

Article 9A of the UCC is amended to incorporate the 2010 amendments to Article 9 adopted by the NCCUSL. The amendments address various aspects of the article.

Control of Electronic Chattel Paper.

A general test for control of electronic chattel paper is established. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned. The test for control under current law is designated as a sufficient, but not necessary, means of establishing control of electronic chattel paper.

Perfection of Security Interests.

Rules are established regarding the perfection of security interests that attach within four months after the debtor changes its location to a new jurisdiction. In addition, rules are established governing security interests that attach within four months after a new debtor (a successor) becomes bound by a security agreement entered into by an original debtor, and the priority contests that may arise when both the original debtor and the successor each have a secured creditor.

Sufficiency of Debtor's Name.

Standards regarding the sufficiency of a debtor's name on a financing statement are revised.

With respect to an individual, the name of the debtor is sufficient if the financing statement provides the individual name of the debtor, the surname and first personal name of the debtor, or the name of the individual indicated on an unexpired Washington driver's license or identification card.

With respect to registered organizations, the name on the financing statement is sufficient if it is the name of the registered organization stated on the most recent public organic record filed with or issued by the registered organization's jurisdiction of organization.

With respect to collateral being administered by the personal representative of a decedent, the financing statement sufficiently provides the name of the debtor if it provides the name of the decedent as the debtor and also indicates that the collateral is being administered by a personal representative.

With respect to collateral held in a trust that is not a registered organization, the financing statement must indicate the name specified in the organic record of the trust and that the collateral is held in trust. Where the organic record does not specify a name the financing statement must indicate the name of the settler or testator, additional information sufficient to distinguish the trust from other trusts that may have the same settlers or testator, and an indication that the collateral is held in a trust.

Other Changes.

Other changes made by the amendments include: removing some types of additional information that must be included in a financing statement; allowing a secured party of record to file an information statement with the filing office in response to another filed record relating to the financing statement; providing additional rules regarding the enforceability of contractual provisions restricting the assignment of receivables; and providing that when collateral consists of a mortgage note, there must be a default in the obligation that secures the mortgage before the secured party may exercise any right the debtor has to non-judicially foreclose the mortgage.

Definitions of the terms "authenticate," "certificate of title," "public organic record," and "registered organization" are modified. Conforming amendments are made to the statutory forms for the initial financing statement and the amendment form. Various other clarifying and conforming amendments are made, and rules for transition to the amended provisions of the article are provided.

Changes Not Included in the Model Act.

The definition of "person related to" is amended to include state-registered domestic partners and persons who are related by law.

The Code Reviser is directed to number sections and subsections in Article 9A consistently with the numbering system used by the NCCUSL for UCC Article 9.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2013.

Staff Summary of Public Testimony:

(In support) This is request legislation from the Uniform Laws Commission. Although this is a dry and somewhat inaccessible area of the law, it is an important one. Article 9 governs many transactions engaged in on a daily basis in this state and across the country. It is important that we keep our version of Article 9 up to date with the rest of the states.

There is no opposition to the revisions. Most of the changes are to correct minor flaws or ambiguities. There are two areas where more significant changes are made. The Article 9–316 revisions provide a temporary period of perfection after a debtor moves or merges with another company. These changes establish rules that most practitioners would already consider to be the law. The Article 9–506 changes provide more certainty and clarity surrounding the name of the debtor that should be used in the financing statement, particularly for individual debtors and registered organizations. The model act provides states with two alternatives on how to identify an individual debtor, and this bill wisely adopts alternative B.

There is a concern with the changes being made to the numbering system. Because the bill amends only a small number of the sections in Article 9A, there will be inconsistent subsection numbering within the article. This is the worst possible alternative. The article should use either the UCC standard or the Washington standard, but not half of one and half of the other. It would be more desirable and much simpler to stay with the UCC numbering system. It is also important to make sure that cross references to any renumbered sections are correct.

(Other) The Revised Code of Washington (RCW) should have a uniform numbering system. Washington's Article 9A uses the UCC numbering system which is inconsistent with the rest of the RCW. This creates confusion for state practitioners. State practitioners will be using Washington's law, not the model act or other states' versions. We are already out of phase with some other states who have not adopted the UCC system. Half of Washington's UCC articles already use a mixed numbering system. It will not be difficult for practitioners to convert the subsections when they need to reference the UCC model act.

(Opposed) None.

Persons Testifying: (In support) Representative Pedersen, prime sponsor; and Stephen Sepinuck, Commercial Law Center, Gonzaga University School of Law.

(Other) Kyle Thiessen, Statute Law Committee.

Persons Signed In To Testify But Not Testifying: None.