

SENATE BILL REPORT

ESHB 1492

As of March 23, 2011

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: Passed House: 3/01/11, 96-1.

Committee Activity: Judiciary: 3/22/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

Background: 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 the latest amendments to Article 9 is to clarify

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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.

Summary of Bill: 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 as follows:

- For 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.
- For 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.
- For 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.
- For 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 settlor 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, and providing additional rules regarding the enforceability of contractual provisions restricting the assignment of receivables.

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.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This is request legislation from the Uniform Law commission. The UCC governs tens of thousands of transactions per year. It is of vital importance to our economic system to keep our version of Article 9 up to date with the rest of the states. The majority of the changes in this bill are to correct minor flaws or ambiguities that have been discovered over the past ten years. The Article 9-506 changes provide more certainty and clarity surrounding the name of the debtor that should be used in a 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 has been some controversy about the numbering system used in the bill. The UCC generally numbers subsections with letters first then numbers. Washington's standard style is the opposite. As you can imagine this gets very confusing for practioners and is why when Article 9A was adopted in Washington, the UCC numbering system was used. If you do not use the UCC system, and pass this bill, the numbering system within Article 9A will be a mix of both UCC and Washington style, which again is too confusing. We ask that you leave in the section directing the Code Reviser to number the bill using the UCC system.

OTHER: Within our industry there was a mixed reaction as to whether we should use Alternative A or Alternative B for the name of an individual. Many feel that Alternative A is the best solution. However, we have agreed to not hold the bill up and will work with the Uniform Law Commission and the Bar Association over the interim on this issue. The bill does not take effect until July 2013; so, there is plenty of time to make a change to this provision.

There are other uniform acts that did not take the numbering system provided by the NUCCSL, including some in the UCC. There is time for us to discuss this more given the delayed effective date. We should have a uniform system within our own code.

Persons Testifying: PRO: Representative Pedersen, prime sponsor; Stephen Sepinuck, Commercial Law Center, Gonzaga University School of Law; Richard Goldfarb, WA State Bar Assn., Business Law Section.

OTHER: Denny Eliason, WA Bankers Association; Kyle Thiessen, Statute Law Committee.