

SUBJECT: Revising statutes governing letters of credit

COMMITTEE: Financial Institutions— favorable, without amendment

VOTE: 8 ayes — Marchant, Gutierrez, Ehrhardt, Elkins, Grusendorf, Patterson, Smith, Solomons

0 nays

1 absent — Giddings

SENATE VOTE: On final passage, April 1 — voice vote

WITNESSES: (*On House companion bill, HB 1560*):
For — W. David East, Texas Business Law Foundation; Karen Neeley, Independent Bankers Association of Texas; Kelly Rodgers, Texas Bankers Association

Against — None

BACKGROUND : Chapters 1-9 of the Business and Commerce Code conform to the Uniform Commercial Code (UCC) adopted in nearly all states. The UCC governs commercial transactions and includes provisions dealing with sales, leases, commercial paper, bank deposits and collections, funds transfers, letters of credit, bills of lading, investment securities and secured transactions. The drafters of the UCC — the American Law Institute and the National Conference of Commissioners on Uniform State Laws — have recently proposed a number of changes to article 5 of the UCC dealing with letters of credit.

The chapter dealing with letters of credit applies to credit issued by a bank that requires a documentary draft or demand for payments and credit issued by a person other than a bank that requires the draft or demand of payment to be accompanied by a document of title.

DIGEST: SB 547 would adopt the revisions proposed by the American Law Institute and the National Conference of Commissioners on Uniform State Laws to chapter 5 of the Business and Commerce Code relating to letters of credit.

The changes proposed by SB 547 would strike nearly all current language and add new provisions that would:

- define adviser, applicant, beneficiary, confirmer, dishonor, document, good faith, honor, issuer, letter of credit, nominated person, presentation, presenter, record, and successor of a beneficiary.
- expand the scope of chapter 5 to all letters of credit and certain rights and obligations involving letters of credit;
- set out terms for issuance, amendment, cancellation and duration of letters of credit;
- establish the roles of confirmer, nominated person and adviser;
- provide issuer's rights and obligations, including the obligation to honor a letter of credit;
- set out obligations to honor fraudulent or forged documents;
- explain what the beneficiary of a letter of credit warrants when presentation of the letter of credit is honored;
- establish remedies for wrongful dishonor or repudiation as well a breach of an obligation by a person obligated by the chapter;
- state the terms by which a letter of credit may be transferred or assigned;
- establish a one year statute of limitations;
- prescribe choice of law and choice of forum requirements;
- allow subrogation of the rights of issuers, applicants and nominated persons; and
- make corrective changes to section number references in the remainder of the Business and Commerce Code.

SB 547 would take effect September 1, 1997, and apply only to letters of credit issued on or after that date.