

SUBJECT: Revising the uniform law of secured business transactions

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley
0 nays

WITNESSES: For — W. David East, Texas Business Law Foundation
Against — None
On — Wally Boggus, Secretary of State's Office

BACKGROUND: Business and Commerce Code, chapter 9 governs commercial transactions between creditors and debtors. The article, based on the Uniform Commercial Code that governs every state except Louisiana, sets forth rules on how a security interest in certain collateral is to be made. A security interest is an interest in certain personal property or fixtures that secures payment or performance of an obligation.

While the specific law may vary according to the type of collateral that is secured, a validly perfected security interest is achieved when a debtor grants a security interest to a secured party as evidenced in a financing statement. This financing statement must be filed in a statutorily specified site, usually the Secretary of State's Office. Priority as to which security interest is given preference if there is more than one interest in a given article of collateral is determined statutorily. Usually, the first secured party to file the financing statement in the required place receives priority. Chapter 9 also considers the rights available to a secured party and a debtor if the debtor defaults.

DIGEST: CSHB 2606 would amend Business and Commerce Code, chapter 9 by expanding the scope of its application. The bill would adjust provisions concerning financing practices and would amend the place of filing of a financing statement to require a filing in the debtor's state of organization. The bill would establish media-neutral terminology in reference to the

requirements for a valid financing agreement. It would include a price for an electronic filing.

CSHB 2606 would expand coverage of chapter 9 to include deposit accounts, health-care insurance receivables, nonpossessory statutory agricultural liens, commercial tort claims, and the sale of payment intangibles and promissory notes.

The bill would amend choice-of-law rules to clarify the determination of which state's law governs perfection and priority of security interests. It also would amend the penalties for noncompliance with enforcement provisions when a secured party seeks a deficiency in a commercial transaction.

CSHB 2606 would make other conforming changes to sections referring to security interests in oil and gas interests, penalties for filing of fraudulent financing statements, and consensual interest in a consumer's nonnegotiable certificate of deposit.

This bill would take effect July 1, 2001. For a security interest that would be validly perfected under current law and that would be considered validly perfected under the bill's provisions, no further action would be required. If a security interest would be validly perfected under current law but not under the bill, the security interest would remain perfected for one year after July 1, 2001. For unperfected security interests, the bill would provide that these interests would remain effective for a year after July 1, 1999. If the security interest was perfected after July 1, 1999, the security interest would become effective as of that date. The bill also would make other specifications for the validity of financing statements and other provisions.

**SUPPORTERS
SAY:**

CSHB 2606 would simplify and modernize the existing uniform law on secured transactions, adopted in 1966. The bill represents a comprehensive rewrite of a commercial law necessary to support modern business practices. The proposed revisions are consistent with recommendations made by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. The bill would simplify the statutes for easier reference and purposes of clarity.

These revisions are intended to simplify filing requirements for financing statements. The bill would create one single, central filing place. It would

eliminate requirements for signatures on financing statement to allow digital signatures and other electronic commercial filing options. It also would create specific requirements for the filing form. These changes would save the Secretary of State's Office time and administrative costs.

CSHB 2606 also would expand the scope of chapter 9's coverage. Rather than provide for a security interest in the proceeds of a bank account, the bill would allow a creditor to create a security interest directly in bank accounts. Mortgages and other payment intangibles also would fall under the chapter's purview. These changes would allow creditors to recover on debts in a more efficient way.

The choice-of-law provision would allow corporations that operate in Texas to perfect a given security interest in Texas instead of in the state where the collateral was located. This change would make the filing and enforcement of security interests easier.

OPPONENTS
SAY:

Changing the choice-of-law provision could have unfavorable effects on Texas consumers. If a Texas consumer bought a product or equipment in Texas from a company incorporated in Delaware, the consumer might have to litigate disputes with the creditor on the basis of Delaware law. Under current law, the location of the collateral governs.

The revision should have included further protections for debtors. Upon default, a secured creditor could require that a debtor pay the entire amount due, within a "safe harbor" period, to avoid loss of the collateral. The bill should include a provision, even if advisory, by which a secured party could allow a debtor to avoid default if the delinquent payments plus interest were paid in a timely fashion, rather than require the entire contract amount.

NOTES:

The committee substitute made nonsubstantive and conforming changes to the original bill.

The companion bill, SB 1058 by Carona, passed the Senate on April 4 and was reported favorably by the House Business and Industry Committee on May 3, making it eligible for consideration in lieu of HB 2606.