

SUBJECT: Revising Uniform Commercial Code secured transaction provisions

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Brimer, Corte, J. Davis, Elkins, George, Solomons, Woolley
0 nays
1 present, not voting — Giddings
1 absent — Dukes

SENATE VOTE: On final passage, March 1 — 29-0

WITNESSES: (*On House companion bill, HB 1367:*)
For — Roger A. Bartlett and Arthur Val Perkins, Texas Business Law Foundation
Against — None

BACKGROUND: In 1999, the 76th Legislature adopted revisions to Business and Commerce Code, chapter 9, which governs secured transactions. These revisions are based on revisions of the Uniform Commercial Code (UCC) approved by the National Conference on Commissioners of Uniform State Laws (NCCUSL) and the American Law Institute (ALI). The revised Chapter 9 will take effect in Texas and most other adopting states on July 1, 2001. The NCCUSL and the ALI have recommended technical amendments before that date.

DIGEST: SB 433 would make various changes in the Business and Commerce Code, ch. 9 concerning secured transactions.

Definitions. SB 433 would amend the definition of “chattel paper” to include a security interest in leased goods and accompanying software. The amended definition also would include transactions in which the monetary obligation of the debtor or lessee included amounts advanced by the secured party or lessor that enabled the debtor or lessee to acquire a license of the software used in the goods. It would not require the monetary obligation actually to be

owed under a license from the secured party or lessor, or that the secured party or lessor actually be a party to the license transaction itself.

Future advances. SB 433 would specify that a security interest securing an additional advance would be subordinate to the rights of a lien creditor under certain circumstances. The bill would set the priority results when a secured party gave additional advances after the levy by a lien creditor, which, in turn, would be made prior to the perfection of the secured party's security interest.

Filing provisions. SB 433 would provide a safe harbor for collateral descriptions in financing statements. It would specify that the debtor may authorize the filing of an initial financing statement or an amendment to a financing statement, and that filing a termination statement indicating that the debtor was a transmitting utility would cause the effectiveness of the financing statement to lapse, except as otherwise provided.

Transition provisions. SB 433 would add a new Subchapter G, containing the July 1, 2001, effective date and transition provisions. Some of these provisions would address the saving clause; the effect of the revision on security interests, perfected and unperfected, before the effective date of the revision; effectiveness of actions taken before the effective date; and when the initial financing statement would suffice to continue the effectiveness of a financing statement.

The bill would address amendment of pre-effective-date financing statements. A person could add or delete collateral covered by, continue or terminate effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the revised statute. Regardless of whether Texas law governs perfection, the bill would allow a termination statement to be filed where the original pre-effective-date financing statement was filed, unless a new initial financing statement had been filed in a different office in accordance with the revised statute.

The bill also would correct mistyped section numbers and grammatical errors and would revise cross-references so that they refer to the correct code provision.

SB 433 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

SB 433 would correct errors in the 1999 legislation identified by NCCUSL and ALI. These changes are necessary to keep the Texas statute consistent with other UCC-based state laws, facilitating secured transactions that affect interstate commerce.

The definition changes would accommodate the practice of leasing goods and accompanying software in the same transaction. The amended definition would not create new obligations or requirements.

The bill would replace many similar or incongruous terms to reflect meaningful distinctions. For example, “deposit account” and “account” have separate meanings, as do “security interest” and “interest.” Similarly, not all “general intangibles” are “payment intangibles.” Other changes would refer to “disposition” rather than “sale,” because a disposition encompasses more than a sale, and would make it clear that certain provisions apply to both perfected and unperfected security interests.

The bill would eliminate unnecessary language to clarify that the priority of even a perfected security of interest is subordinate to a prior lien creditor in certain circumstances. It would clarify several sections’ applicability to assignments and transfers, consistent with the revised Chapter 9.

SB 433 would clarify that a security interest securing an additional advance is subordinate to the rights of a lien creditor under certain circumstances. It would clarify priority results when a secured party gave additional advances after the levy by a lien creditor, which, in turn, would be made prior to the perfection of the secured party’s security interest.

The bill would set forth rules for financing statements filed before the revised Chapter 9 takes effect. This section would specify how a person could amend a pre-effective-date financing statement after the date the revision took effect. Without this guidance, a person accidentally could invalidate a financing statement or could rely on an amendment that was not in effect.

SB 433
House Research Organization
page 4

The Legislature needs to adopt SB 433 for immediate effect, as the new Chapter 9 will take effect July 1, 2001. If SB 433 does not take effect before then, the new statute will contain too many confusing errors.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, HB 1367 by Solomons, passed the House as amended on the Local, Consent, and Resolutions Calendar on March 29 and has been referred to the Senate Business and Commerce Committee.