

**SUBJECT:** Revising the uniform law on documents of title

**COMMITTEE:** Business and Industry — favorable, without amendment

**VOTE:** 8 ayes — Giddings, Elkins, Bailey, Martinez, Solomons, Taylor, Vo, Zedler

0 nays

1 absent — Bohac

**WITNESSES:** For — None

Against — None

On — Rodger Bartlett

**BACKGROUND:** Business and Commerce Code, ch. 7 governs documents of title used in the commercial shipment and storage of goods. The chapter, based on Article 7 of the Uniform Commercial Code (UCC), sets forth rules on how a document of title facilitates transactions in goods in storage or transit. The UCC governs commercial transactions of various kinds in all 50 states.

A document of title serves three distinct functions — as a contract between parties, as a receipt, and to show ownership of the goods covered by the document. A document of title can be either a bill of lading or warehouse receipt. Bills of lading issued by common carriers — entities that carry the goods from place of origin to destination — contain a description of the goods, the name and address of the shipper, and the place where the goods are to be delivered. Warehouse receipts, issued by warehousemen, contain a description of the goods stored in a warehouse. As with negotiable instruments, the rules regarding documents of title are written for a paper-based system where rights of third parties are determined in part by possession and endorsement of the paper document of title.

Article 7 of the UCC had not been revisited since the 1951 promulgation of the original UCC. In 2003, the National Conference of Commissioners

on Uniform State Laws (NCCUSL) adopted revisions to Article 7 and recommended enactment by all 50 states in light of changes in federal law and the growing use of electronic transactions.

DIGEST:

HB 2452 would amend Business and Commerce Code, ch. 7 to include UCC Article 7 revisions dealing with the ownership, possessory, collateral, and other rights of various parties in goods that were in the custody of a storage or transportation business while being stored or shipped.

**Electronic documents of title.** The bill would allow the use of electronic documents of title as an alternative to paper for the purpose of proof of ownership and other rights. To the extent possible, the rules for an electronic document of title would be the same as, or as similar as possible to, the rules for tangible documents of title. The bill would address the issue of “control” of an electronic document; i.e., specifying the conditions under which possession of an electronic title would confer the rights equivalent to the possession and endorsement of a tangible document of title. The definition of control would be adapted from Article 9 of the UCC concerning control of electronic chattel paper.

The bill also would address the conversion of a document from one medium to another and negotiation of an electronic negotiable document of title. It would allow parties to substitute an electronic document of title for an existing paper document, and vice versa, with the approval of both parties and would set forth the minimum requirements that would give effect to the substitute document issued in the alternate medium.

HB 2452 would make changes throughout the chapter to indicate when rules were limited to electronic documents of title or to tangible documents of title. Rules referencing documents of title, warehouse receipts, or bills of lading that did not specifically apply to a particular medium would apply equally to tangible and electronic documents.

**Updated provisions.** Other notable changes that HB 2452 would make include:

- adding new definitions of “carrier”, “sign” and “shipper”;
- deleting references to tariffs or filed classifications that resulted from deregulation of industries related to warehouses and carriers;

- specifying when rules applied only to warehouse receipts or to bills of lading;
- specifying that particular terms need not be included in a warehouse receipt for it to be considered valid;
- broadening the ability of a warehouse, in accord with commercial practice, to make an effective limitation on liability in its warehouse receipt or storage agreement;
- allowing a warehouse to hold a lien on goods covered by a storage agreement and specifying priority rules regarding the claim of a warehouse lien as against other interests;
- specifying the extent of the carrier's lien;
- specifying that the warranty made by negotiation or delivery of a document of title should apply only in the case of a voluntary transfer of possession or control of the document;
- providing greater flexibility to a court regarding adequate protection against loss when ordering delivery of the goods or issuance of a substitute document; and
- various conforming and technical changes.

The bill would take effect September 1, 2005, and would apply only to a document of title or a bailment that arises on or after the effective date.

**SUPPORTERS  
SAY:**

HB 2542 would revise Business and Commerce Code, ch. 7 to provide a framework for the use of electronic documents of title and to update the statute for modern times in light of state, federal, and international developments. The bill would simplify and modernize the existing uniform law on documents of title for easier reference and purposes of clarity, without changing the basic principles of current law. The proposed revisions are consistent with recommendations made by the American Law Institute and the NCCUSL.

The bill represents a comprehensive rewrite of a commercial law necessary to support modern business practices. Documents of title are fundamental to the transfer of goods in interstate commerce. The significant increase in the use of technology for business purposes over the past few decades makes it essential to modernize the law with regard to electronic documents of title and electronic communications.

Several states have introduced legislation to revise their UCC Article 7 provisions, including Arizona, Illinois, Mississippi, Nevada, Oklahoma,

and West Virginia. States that already have enacted the revisions include Alabama, Connecticut, Delaware, Hawaii, Idaho, Maryland, Minnesota, Nebraska, New Mexico, North Dakota, and Virginia. Adopting Article 7 revisions would keep Texas in line with provisions in these states and with current document-of-title practice. The new rules are entirely friendly to commerce, and Texas should join other states in adopting them as soon as possible.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

The companion bill, SB 1593 by Carona, passed the Senate on the Local and Uncontested Calendar on April 14 and was reported favorably, without amendment, by the House Business and Industry Committee on April 26, making it eligible to be considered in lieu of HB 2452.

SB 1058, by Carona, enacted by the 76th Legislature in 1999, amended Business and Commerce Code, ch. 9, which governs commercial transactions between creditors and debtors. Like the revisions to ch. 7 contained in HB 2452, the revisions to ch. 9 were based on recommendations promulgated by NCCUSL.