

- SUBJECT:** Revising the uniform law of secured business transactions
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons
0 nays
2 absent — S. Miller, Workman
- WITNESSES:** For — Roger Bartlett, Texas Business Law Foundation; Karen Neeley, Independent Bankers Association of Texas; (*Registered, but did not testify*: Kelly Rodgers, Wells Fargo Bank, N.A.)
Against — None
- BACKGROUND:** Business and Commerce Code, ch. 9 governs commercial transactions between creditors and debtors. The article, based on the Uniform Commercial Code that governs every state, sets forth rules on how a security interest in certain collateral should 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 generally achieved when a debtor grants a security interest to a secured party as proven in a financing statement. This financing statement must be filed in a statutorily specified site, usually with the secretary of state. Priority for each security interest is determined by statute if there is more than one interest in a given article of collateral. 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 1617 would amend several provisions of Business and Commerce Code, ch. 9.

Debtor name. The bill would amend rules for when a financing statement sufficiently provides the name of the debtor. For individual debtors, the proper name would be indicated on an unexpired driver's license or an

unexpired personal identification card. If the debtor did not have a driver's license or personal identification card, any of the following would be acceptable:

- the individual name of the debtor;
- the name on an unexpired consular identification card; or
- the individual's surname and first personal name.

Definitions. The bill would add a new definition for “public organic record” and change the definition of “authenticate” to reflect changes in technology in adopting or accepting a record. The definitions of “certificate of title” and “registered organization” also would be amended.

Lottery prizes. The bill would make certain changes to restrictions on assignment of property, including specifying that the final two years of lottery prize payments could not be assigned.

Correction statement. References to a “correction statement” would be replaced with the term “information statement.”

Changes from specific to general language. The bill would remove the current law's references to specific Texas certificate of title statutes and replace it with a more general reference to “a certificate of title statute of this state.” Similarly, the bill would remove the current law's references to specific types of collateral that a buyer takes free of a security interest and replace them with a more general reference to collateral other than tangible chattel paper. Certain references to a name “change” by the debtor would be replaced with broader language.

Other provisions. The bill would recognize systems used to show the transfer of interests in electronic chattel paper, make changes to perfection rules when the debtor changed location, address the priority of a new debtor when the financing statement was ineffective, and revise the ability of a registered organization to designate an office as its location. The bill also would specify that when nonjudicial enforcement of a mortgage was sought, the secured party would have to swear that a default had occurred with respect to the obligation secured by the mortgage, and not simply that a default had occurred.

Effective date and transition provisions. The bill would take effect on July 1, 2013. 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, 2013. The bill also would make other specifications regarding effective dates for the validity of financing statements and other provisions.

**SUPPORTERS
SAY:**

CSHB 1617 would implement recommendations made by the National Conference of Commissioners on Uniform State Laws to update the uniform law on secured transactions. The most recent changes to the law became effective in July 2001. The bill also contains some Texas-specific changes.

The bill would address some of the difficulties presented in determining the proper name to use in a financing statement for an individual debtor, which is less publicly available than a business name.

The bill reflects changes in technology since the last revision, such as the rise of contracts formed over the Internet. Changes were made to address another statute in this area, the Uniform Electronic Transactions Act.

The bill also would protect the state's ability to recover lottery winnings when a lottery winner had outstanding child support obligations. This is a Texas-specific change that would effectively overrule a court case that allowed these winnings to be freely assigned, despite the winner owing child support.

The bill also would replace the term "correction statement" with "information statement." These statements are often used to correct mistakes in a financing statement, but unscrupulous debtors also have used these statements to state falsely that a loan has been fully paid. A secured party then must file a statement saying the loan has in fact not been paid. Since the false debtor's statement is not a "correction," the current term is misleading. The term "information statement" would be more appropriate.

**OPPONENTS
SAY:**

Texas should not recognize foreign consular identification cards as a source of the name of an individual debtor. The cards are prone to fraud because the documents used to obtain the cards are not adequately checked for authenticity. The reference to consular identification cards does not appear in the recommendations by the National Conference of Commissioners on Uniform State Laws.

NOTES:

The committee substitute differs from the original by changing acceptable sources of an individual debtor's name. The substitute specifies that a driver's license must be unexpired.

The companion bill, SB 782 by Carona, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 7 and was referred to the House Business and Industry Committee on April 11.