

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 652  
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Economic Development  
3-10-97  
Committee Report (Substituted)

### **DIGEST**

Currently, Section 9.105(a)(9), Business & Commerce Code, does not include nonnegotiable certificates of deposit within the definition of "instrument" in regard to secured transactions. A security interest in a certificate of deposit is perfected by filing a financial statement. Lenders often do a lien search before such a filing. The consequences of both is additional costs to business transactions involving certificates of deposits. If nonnegotiable certificates of deposit were included within the definition of "instrument," then a security interest in such a certificate of deposit could be perfected by possession. This bill would amend the definition of "instrument" to include a "nonnegotiable certificate of deposit." This bill would set forth the definition of a "nonnegotiable certificate of deposit." Finally, this bill would provide for how a party establishes possession of such a nonnegotiable certificate of deposit in which the secured party is the issuer of the document.

### **PURPOSE**

As proposed, C.S.S.B. 652 sets forth the definition of "instrument," which can be perfected by possession for purposes of secured transactions, to include nonnegotiable certificates of deposit. Additionally, this bill defines a "nonnegotiable certificate of deposit" and provides for how a party establishes possession of such a nonnegotiable certificate of deposit in which the secured party is the issuer of the document.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 9.105(a)(5), Business & Commerce Code, to redefine "deposit account" as a certain account, other than an account evidenced by, among other items, a nonnegotiable certificate of deposit.

SECTION 2. Amends Section 9.105(a)(9), Business & Commerce Code, to redefine "instrument" as, among other items, a nonnegotiable certificate of deposit.

SECTION 3. Amends Section 9.105(a), Business & Commerce Code, by adding Subdivision (14), to define "nonnegotiable certificate of deposit."

SECTION 4. Amends Section 9.304(a), Business & Commerce Code, to provide that possession of a nonnegotiable certificate of deposit in which the secured party is the issuer of the document is established when the issuer places a restriction on withdrawals from the account on its records that evidences the document. Provides that possession established by the restriction of withdrawals from an account evidenced by a nonnegotiable certificate of deposit takes priority over any other possession established under this chapter of which the secured party does not have prior knowledge.

SECTION 5. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 6. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

Revises proposed relating clause.

Amends SECTION 1, Section 9.105(a)(5), Business & Commerce Code, to propose a revised definition of "deposit account," instead of "instrument."

Amends SECTION 2, Section 9.105(a)(9), Business & Commerce Code, to propose a revised definition of "instrument" as, among other items, a nonnegotiable certificate of deposit, instead of the proposed revised definition of "instrument" as, among other items, a certificate of deposit that is not a negotiable instrument, including a receipt for a book entry certificate of deposit.

Amends SECTION 3, Section 9.105(a), Business & Commerce Code, to define a "nonnegotiable certificate of deposit."

Amends SECTION 4, Section 9.304(a), Business & Commerce Code, to set forth when possession is established in a nonnegotiable certificate of deposit in which the secured party is the issuer.

Amends SECTION 5, to set forth the effective date and prospective application of this Act that was formerly in SECTION 2. Makes a nonsubstantive change.

Amends SECTION 6, to set forth the emergency clause that was formerly in SECTION 3.