BILL ANALYSIS

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Business & Commerce
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Chapter 3 of the Texas Business & Commerce Code (Article 3 of the Uniform Commercial Code (UCC) governs negotiable instruments, and Chapter 4 governs bank deposits and collections. The National Conference of Commissioners on Uniform State Laws promulgated changes to Articles 3 and 4 of the UCC. This bill enacts the majority of those provisions but takes a non-uniform approach with regard to remotely created items.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3.103(a), Business & Commerce Code, as follows:

(a) Adds definitions for "consumer account," "consumer transaction," "principal obligor," "remotely-created item," and "secondary obligor." Redesignates existing Subdivisions to reflect these additions.

SECTION 2. Amends Sections 3.103(b) and (c), Business & Commerce Code, as follows:

(b) Adds "account", as defined in Section 4.104, to the list of other definitions applying to this chapter and the sections in which they appear.

(c) Deletes "bank," as defined in Section 4.105, to the list of definitions in other chapters which apply to this chapter.

SECTION 3. Amends Sections 3.106(a) and (b), Business & Commerce Code, by replacing "writing" with "record".

SECTION 4. Amends Section 3.119, Business & Commerce Code, by permitting a defendant to give the third person notice of the litigation in a record, rather than written notice of the litigation, in an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or Chapter 4.

SECTION 5. Amends Section 3.305, Business & Commerce Code, by amending Subsection (a) and by adding Subsections (e) and (f), as follows:

(a) Provides that except as otherwise provided in this section, rather than Subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to certain factors.

(e) Sets forth certain provisions which apply in a consumer transaction, if law other than this chapter requires that an instrument include a specific statement and the instrument does not include such a statement. Requires that if an instrument includes or is deemed to include a statement under this subsection, certain holders or transferees to be entitled to full indemnity from the seller for any liability under the statement incurred by specified persons, plus reasonable attorney's fees. Provides that the provision in this section for express indemnity does not affect any right of indemnity, subrogation, or

recovery to which a holder or transferee may be entitled as specified. Provides that it is not the intent of this section to provide a holder or transferee indemnity from the seller with respect to the holder or transferee's direct liability to the issuer for the holder or transferee's own actionable misconduct unrelated to derivative liability under the statement.

(f) Provides that this section is subject to law other than this chapter that establishes a different rule for consumer transactions.

SECTION 6. Amends Section 3.309(a), Business & Commerce Code, as follows:

(a) Provides that a person who is not in possession of an instrument is entitled to enforce the instrument if: the person seeking to enforce the instrument was entitled to enforce the instrument when loss of possession occurred; or has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred. Deletes existing text permitting the person to enforce the instrument if the person was in possession of the instrument and entitled to enforce it when loss of possession occurred.

SECTION 7.   Amends Section 3.312(a)(3), Business & Commerce Code, to redefine "declaration of loss."

SECTION 8. Amends Sections 3.416(a) and (e), Business & Commerce Code, as follows:

(a) Provides that a person under certain circumstances warrants that, with respect to a remotely-created item, the person on whose account for which the item is drawn authorized the issuance of the item in the amount for which the item was drawn. Deletes existing text providing that the person warrants that if the instrument is a demand draft, the creation of the instrument according to the terms of its face was authorized by the person identified as drawer.

(e) Provides that under certain circumstances a transferee would not receive the warranty in Subsection (a)(6) from any transferor. Deletes existing text providing that if the warranty under Subsection (a)(6) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

SECTION 9. Amends Sections 3.417(a) and (g), Business & Commerce Code, as follows:

(a) Provides that a person under certain circumstances warrants that, with respect to a remotely-created item, the person on whose account for which the item is drawn authorized the issuance of the item in the amount for which the item was drawn. Deletes existing text providing that the person warrants that if the instrument is a demand draft, the creation of the instrument according to the terms of its face was authorized by the person identified as drawer.

(g) Provides that under certain circumstances a transferee would not receive the warranty in Subsection (a)(4) from any transferor. Deletes existing text providing that if the warranty under Subsection (a)(4) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

SECTION 10. Amends Section 3.419, Business & Commerce Code, by amending Subsection (e) and by adding Subsection (f), as follows:

(e) Provides that under certain circumstances the signer of an instrument is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party, would be obliged, without prior resort to the accommodated party by the person entitle to enforce the instrument.

(f) Redesignated from existing Subsection (e). Provides that under proper circumstances, an accommodation party may obtain relief that requires the

accommodated party to perform its obligations on the instrument. Makes a nonsubstantive change.

SECTION 11. Section 3.506, Business & Commerce Code, as follows:

Sec. 3.506. New heading: PROCESSING FEE BY HOLDER OF PAYMENT DEVICE. (a) Defines "payment device." Redesignates existing Subsections (a)-(d) as Subsections (b)-(e).

(b) Replaces "check" with "payment device," and makes nonsubstantive changes.

(c) Makes nonsubstantive changes.

(d) Provides that notwithstanding Subtitle B, Title 4, Finance Code, or any other law, rather than any other law, a contract, rather than a loan agreement, made under Subtitle B, Title 4, Finance Code, rather than Chapter 342, may provide that on return of a dishonored payment device given in payment under the contract the holder is authorized to take certain actions. Makes nonsubstantive changes. Prohibits interest from being charged on the fee during the term of the contract.

(e) Makes a conforming change.

SECTION 12. Amends Section 3.602, Business & Commerce Code, as follows:

Sec. 3.602. PAYMENT. (a) Makes conforming changes.

(b) Provides that subject to Subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note under certain circumstances. Provides that notification is adequate only if it is signed as specified. Requires a transferee to seasonably furnish reasonable proof that the note has been transferred upon request. Provides that a payment to the person formerly entitled to enforce the note is effective for purposes of Subsection (c) even if the party obliged to pay the note has received a notification under this subsection, unless the transferee complies with the request.

(c) Provides that the obligation of the party obliged to pay the instrument is discharged even though payment is made with the knowledge of a claim to the instrument under Section 3.306 by another person, subject to Subsection (e), to the extent of a payment under Subsections (a) and (b).

(d) Provides that subject to Subsection (e), certain parties, are deemed to have notice of any payment that is made under Subsection (b) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) Redesignated from existing Subsection (b). Makes conforming changes.

(f) Defines "signed."

SECTION 13. Amends Section 3.604, Business & Commerce Code, by amending Subsection (a) and by adding Subsection (c), as follows:

(a) Makes a conforming change.

(c) Defines "signed."

SECTION 14. Amends Section 3.605, Business & Commerce Code, as follows:

Sec. 3.605. New heading: DISCHARGE OF SECONDARY OBLIGORS. (a) Sets forth rules to be applied if a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor.

(b) Sets forth rules to be applied if a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor.

(c) Sets forth rules to be applied if a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor.

(d) Provides that the obligation of the secondary obligor is discharged to an extent certain circumstances exist. Sets forth the methods used to determine the reduction in value of an interest. Provides actions which impair the value of an interest, for the purposes of this subsection.

(e) Provides that a secondary obligor is not discharged under Subsection (a)(3), (b), (c), or (d), unless certain conditions exist.

(f) Provides that a secondary obligor is not discharged under this section under certain circumstances. Provides that consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor under specific circumstances.

(g) Provides that a release or extension preserves a secondary obligor's recourse under specific circumstances. Provides that the recourse of the secondary obligor continues as though the release or extension had not been granted.

(h) Provides that a secondary obligor asserting discharge under this section has the burden of persuasion with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) Provides that if the secondary obligor demonstrates that certain the occurrence of specific actions and circumstances, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. Provides that under those circumstances, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument. Deletes text of existing Subsections (a) through (i).

SECTION 15. Amends Section 4.104(b) and (c), Business & Commerce Code, as follows:

(b) Deletes "bank", as defined in Section 4.105, from the list of definitions in other chapters which apply to this chapter.

(c) Adds "record," as defined in Section 1.202, and "remotely-created item," as defined in Section 3.103, to the list of definitions in other chapters which apply to this chapter.

SECTION 16. Amends Section 4.207(a), Business & Commerce Code, as follows:

(a) Provides that a customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that, with respect to a remotely-created item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. Deletes existing text relating to demand drafts.

SECTION 17. Amends Sections 4.208(a) and (g), Business & Commerce Code, as follows:

(a) Makes conforming changes.

(g) Provides that, under certain circumstances, if a transferee asserts a claim for breach of the warranty Subsection (a)4), but under applicable law (including the applicable choice-of-law principles) that transferee would not make a warranty substantially similar to the warranty in Subsection (a)(4) if such transferee were a transferor, then that transferee would not receive the warranty in Subsection (a)(4) from any transferor. Deletes existing text providing that if the warranty under Subsection (a)(4) is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

SECTION 18. Amends Section 4.212(a), Business & Commerce Code, to make a conforming change.

SECTION 19. Amends Section 4.301(a), Business & Commerce Code, as follows:

(a) Redesignates Subsection (a)(2) as Subsection (a)(3). Authorizes a payor bank to revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it returns and image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item, and the image is returned in accordance with that agreement. Makes a conforming change.

SECTION 20. Amends Section 4.403(b), Business & Commerce Code, to make nonsubstantive changes.

SECTION 21. Repealer: Section 3.116(c) (Joint and Several Liability; Contribution), Business & Commerce Code.

SECTION 22. Effective date: September 1, 2005.