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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/13

SPONSOR Ivey-Soto/Cook LAST UPDATED 02/14/13 HB \_\_\_\_\_

SHORT TITLE Uniform Commercial Code Secured Transactions SB 146/aSJC

ANALYST Weber

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY13 | FY14 | FY15 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | NFI  |      |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

General Services Department (GSD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 146 deletes the entire Section 2 on pages 3 through 12 and the following is renumbered accordingly.

The bill did not make any changes in definitions in Section 2 so it was redundant and, therefore, deleted.

#### Synopsis of Original Bill

Senate Bill 146 (SB 146) proposes to clarify and amend some of the definitions contained in the Uniform Commercial Code. The NM Uniform Commercial Code (UCC found at Chapter 55 and Secured Transactions found in Article 9) is an extensive statute presently containing 710 different sections on the subject of secured transactions. The bill amends and clarifies the perfection of security interests, control of electronic chattel paper, priority in certain interests, discharge of account debtor, restrictions of assignments of promissory notes, the content of the financial statement, filing procedures of secured interests and the collection and enforcement of secured party. In part, SB 146 would amend NMSA 1978, Section 55-9-521 dealing with the form of financing statement and amendment; records and add nine (9) new sections to the UCC-Secured Transactions.

The Administrative Office of the Courts (AOC) provides the following highlights that the bill:

- amends Section 55-4A-108 NMSA 1978 to clarify that the Funds Transfer portion of the UCC, Article 4A, applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (EFTA) of 1978 (15 U.S.C. Section 16930-1), unless the remittance transfer is an electronic fund transfer as defined in the EFTA;
- amends Section 55-4A-108 to provide that in a funds transfer to which Article 4A of the UCC applies, in the event of an inconsistency between a provision of Article 4A and the EFTA, the provisions of the EFTA govern to the extent of the inconsistency;
- amends Section 55-9-102 (7) NMSA 1978, within the secured transactions article of the UCC, to provide that “authenticate” means to sign or, “with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process”;
- amends Section 55-9-102 (10) to provide that the term “certificate of title” includes an alternative record maintained by the governmental unit that issues certificates of title if a statute permits the security interest to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral;
- amends Section 55-9-102 (67) to add a definition of “public organic record” to mean a record available to the public for inspection that: (A) consists of the record initially filed with or issued by a state or the U.S. to form or organize an organization and any record filed with or issued by the state or the U.S. that amends or restates the initial record; (B) is an organic record or a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record if a statute of the state governing business trusts requires that the record be filed with the state; or (C) consists of legislation enacted by a state legislature or the U.S. Congress that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the U.S. that amends or restates the name of the organization;
- amends Section 55-9-1-2 (70) to clarify that the term “registered organization” means an organization formed or organized solely under the law of a state or the U.S. by the filing of a public organic record with, the issuance of a public organic record by or the enactment of legislation by the state or the U.S. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state;
- amends Section 55-9-105 NMSA 1978 to provide that a secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned;
- amends Section 55-9-316 (h) NMSA 1978 to set out rules that apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction and Section 55-9-36 (i) to set out rules that apply when a financing statement naming an original debtor is filed pursuant to the law of the designated jurisdiction and the new debtor is located in another jurisdiction;
- amends Section 55-9-502 (c) NMSA 1978 to provide that a record of a mortgage is effective, from the date it is filed for record, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if, along with other specified requirements, the record satisfies the requirement for a financing statement in this section, but: (A) the record need not indicate that it is to be

filed for record in the real property records; and (B) the record sufficiently provides the name of a debtor who is an individual by providing the name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom other specified Article 9 requirements;

- amends Section 55-9-503 NMSA 1978 to clarify when a financing statement sufficiently provides the name of the debtor, when the name of a decedent indicated on an order appointing the personal representative of the decedent is sufficient, that the most-recently issued driver’s license is sufficient, and to define the term “name of the settlor or testator”;
- amends Section 59-516 NMSA 1978, governing what constitutes filing of a financing statement and the effectiveness of filing;
- amends Section 55-9-518 NMSA 1978 to provide that a person may file an information statement with respect to a record filed in the filing office if the person is a secured party of record with respect to the financing statement to which the record relates and believes that that person that filed the record was not entitled to do so under Section 55-9-509 NMSA 1978, and sets out information statement requirements;
- enacts a new section, 55-9-521 NMSA 1978, setting out the form of a “UCC Financing Statement” a “UCC Financing Statement Addendum” a “UCC Financing Statement Amendment” and a “UCC Financing Statement Amendment Addendum”;
- provides that this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this 2013 Act takes effect, except that the Act does not affect an action, case or proceeding commenced before this Act takes effect;
- enacts new sections governing security interests both perfected and unperfected before the effective date of the Act;
- enacts new sections governing the effectiveness of actions taken with regard to financing statements before the effective date of the Act, including amendments;
- enacts a new section setting out when a person is entitled to file an initial financing statement or a continuation statement; and
- enacts Section 55-9-809 NMSA 1978, providing that this Act determines the priority of conflicting claims to collateral, unless the relative priorities of the claims are established before this Act takes effect in which case current Article 9 law, as it existed before amendment, determines priority.

The effective date of the Act is July 1, 2013.

The Attorney General’s Office provides similar information.

### **FISCAL IMPLICATIONS**

No significant fiscal implications were identified. However, the AOC notes there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement and application of this law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.