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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 3/10/05 HB 834/aHJC

SHORT TITLE Uniform Commercial Code Revisions SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment eliminates references to public-finance transactions to bring the bill into conformance with existing New Mexico law.

Synopsis of Original Bill

House Bill 834 amends, repeals and enacts certain sections of the Uniform Commercial Code (UCC), Section 55-1-101 NMSA 1978 et. seq., in large part to conform to portions of the model Uniform Commercial Code as drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The purpose of the changes is to bring New Mexico law into conformance with other states in order to enable commercial transactions across state boundaries to be governed by a uniform set of statutes. Changes also need to be made in order to adapt to advances in technology.

The bill addresses three main articles of the UCC:

- Article 1: General Provisions
- Article 7: Documents of Title
- Article 9: Secured Transactions

The bill also amends other articles of the UCC to create conformity and consistency throughout the code.

Article 1 of the UCC provides definitions and general provisions that apply to transactions covered by other articles of the UCC. As other articles of the UCC have been revised and amended to conform to modern usages and legal developments, the revisions to Article 1 are intended to make both conforming, technical changes, as well as changes clarifying various ambiguities that have arisen over the years. The revisions also make certain substantive changes, including expanding the definition of good faith to include “the observance of reasonable commercial standards of fair dealing,” and allowing courts to use evidence of the “course of performances” of a transaction in contract interpretation.

Article 7 governs the transfer of bills of lading and warehouse receipts as documents of title. Generally, transfer of a document of title from one person to another transfers the rights in the goods represented by the document of title. Article 7 provides for negotiable documents of title, which transfer interests in goods represented in such documents free of any claims or defenses of the issuer or other transferor of the document. The revisions establish the rules for electronic documents of title. It authorizes them, incorporates electronic records and signatures for statute of fraud purposes, provides an analogous system for transfer of electronic documents to the system of negotiable paper documents of title, provides for conversion of electronic documents of title into tangible documents of title and vice versa, and prepares for the expected reliance upon electronic documents of title into the future. A key concept to transfer of electronic documents of title is that of “control.” Control occurs when it is possible to identify every transfer of an authoritative copy of an electronic document with absolute certainty and when transfer can only occur when the party in control authorizes transfer.

The amendments to Article 9 are conforming amendments dealing mainly with electronic documents. The effective date of the Act is January 1, 2006.

Significant Issues:

The AOC provided the following:

- This bill provides that if a document of title is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of non surrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney fees in any action under this subsection.
- This bill provides that a secured party having possession of collateral may use or operate the collateral as permitted by an order of a court having competent jurisdiction.

FISCAL IMPLICATIONS

There will be a cost for statewide update, distribution, and documentation of statutory changes.

Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced proceedings. 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.

ADMINISTRATIVE IMPLICATIONS

The court staff will have to use existing staff to update the laws in the affected areas.

OTHER SUBSTANTIVE ISSUES

The NCCUSL, now 113 years old, provides states with non-partisan and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state. While NCCUSL is best known as the drafters of the Uniform Commercial Code (UCC), in recent years it has also promulgated widely-adopted uniform acts on the interstate recognition and enforcement of family law determinations (child support, custody, parentage, and protection orders), uniform acts on arbitration and mediation, revisions to the principal business organizations statutes of the United States (partnerships, limited partnerships, limited liability companies, etc.), acts codifying or recodifying state trust and securities laws, and several acts relating to land use, common interest ownerships, and other real property subjects.

Uniform Law Commissioners must be lawyers, qualified to practice law. They are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote the enactment of uniform state laws in areas where uniformity is desirable and practicable. NCCUSL is funded by, and works on behalf of, state governments.

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