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FISCAL IMPACT REPORT

SPONSOR Nibert/Cervantes LAST UPDATED _____
ORIGINAL DATE 01/25/23
SHORT TITLE Controllable Electronic Records BILL NUMBER House Bill 90
ANALYST Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Regulation and Licensing Department (RLD)

No Response Received From

Secretary of State (SOS)

SUMMARY

Synopsis of House Bill 90

House Bill 90 (HB90) amends, repeals, and enacts sections throughout the Uniform Commercial Code (UCC), particularly Sections 55-1-101 through 55-12-111 NMSA 1978, amending language to conform to the Uniform Law Commission's (ULC) amendments to the Uniform Commercial Code in 2022. Those UCC amendments address emerging technologies, providing updated rules for commercial transactions involving virtual currencies, distributed ledger technologies such as blockchain, artificial intelligence, and other technological developments.

HB90 adds a new article to the UCC, Article 12, addressing certain types of digital assets defined as controllable electronic records. According to the bill, "controllable electronic record" means a record stored in an electronic medium that can be subjected to control pursuant to Section 55-12-105 NMSA 1978. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.

The amendments provide new default rules to govern transactions involving these new technologies. The bill also clarifies how the UCC applies to mixed transactions involving both goods and services. The amendments also contain some miscellaneous revisions to provide additional clarification.

Additionally, the term “writing” is replaced by the term “record” throughout the bill. Further, the bill clarifies that “the term (money) does not include an electronic record” and does not include a deposit account of money in an electronic form that cannot be subjected to control.

The effective date of this bill is January 1, 2024.

FISCAL IMPLICATIONS

This bill does not have anticipated fiscal impacts and does not make an appropriation. The bill clarifies definitions in the UCC and primarily updates language that should not have a fiscal or other revenue impact. However, the bill does provide clarity and updates definitions of “money” and “electronic money” that may have impacts on how transfers of debt apply under the UCC following the passage of the bill.

SIGNIFICANT ISSUES

According to the office of the Attorney General, the proposed amendments to the UCC were drafted by the ULC in partnership with the American Law Institute. The ULC approved and recommended the new provisions be enacted in all states during its July 2022 meeting. The Regulation and Licensing Department (RLD) notes the overarching purpose of the revisions contained in HB90 serve to update the UCC’s provisions to reflect the evolution of relevant business practices. For instance, HB90 adds “electronic” to the list of defined terms contained in the UCC.

Further, RLD notes, “HB90 does include a definition of a bank branch in determining jurisdiction, but this use is in keeping with the current understanding of the UCC.” HB90 is not believed to have an impact on the laws relevant to the operations of the financial institutions division of RLD, but HB90 does update laws relating to commercial paper so that these laws are more consistent with current federal law.

Further, the bill adds a new definition of “hybrid transactions” that may confuse gross receipt tax sourcing, but those regulations could likely be amended to conform to this new definition.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Regulation and Licensing Department provides the following:

The Uniform Securities Act, 58-13C-101 et seq (the “Securities Act”), is the primary source of legal authority for the operations of and governing law relied on by the securities division of the regulation and licensing department. HB90 does not conflict with the Securities Act, corresponding rules or other known law relied upon by the Securities Division of the RLD as part of the Securities Division’s regular operations. The Securities Division’s operations primarily concern oversight of the securities industry in New Mexico, including registration of securities and industry participants;

examinations of investment advisors, investment advisor representatives and in some cases broker-dealers and agents; enforcement of the Securities Act; and public outreach and education. *See* 58-13C-101 et seq. Article 8 of the UCC, “Investment Securities” sets forth rules relative to the transfer of the rights that constitute securities and to the establishment of those rights against the issuer and other parties. *See* 55-8-101, Annotations, Purposes. Article 8 contains the unequivocal provision that “(t)he characterization of a person, business or transaction for purposes of this article does not determine the characterization of the person, business or transaction for purposes of any other law, regulation or rule.” 55-8-102(d).

The UCC contains several articles potentially relevant to financial institutions, specifically, Art 3, Negotiable Instruments; Art. 4, Bank Deposits and Collections; Art 4A Fund Transfers; and Art 4, Letters of Credit. The minor changes contained in HB90 relating to financial institutions are in keeping with the innovations in the financial industry over the last two decades, particularly those concerning electronic checks/check transmission practices made available in the Check Clearing for the 21st Century Act (aka “Check 21 Act”), implemented in subpart D of Regulation CC (12 CFR part 229) and the expansion of the law to “record” rather than the existing “writing” as described in the synopsis.

Art. 12 in HB90 creates new rights and interests relevant to a newly defined term “controllable electronic record.” Art. 12 contains the specific provision that “(a) transaction subject to Sections 55-12-101 through 55-12-106 NMSA 1978 is subject to any applicable rule of law that establishes a different rule for consumers and any other statute or regulation that regulates rates, charges, agreements and practices for loans, credit sales or other extensions of credit, the Unfair Practices Act and any consumer-protection statute or regulation.”

JH/al/hg