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**SFA****BILL ANALYSIS**

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House Bill 5327 (Substitute H-2 as passed by the House)

Sponsor: Representative Andrew Richner

House Committee: Commerce

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-18-98

## **CONTENT**

The bill would amend the Uniform Commercial Code to rewrite Article 5, which governs letters of credit. Among other things, a letter of credit could be issued in any form that was a record, and “record” would be defined without reference to a written document. The bill also would incorporate a “standard practice” requirement for issuers of letters of credit; require that a presentation of documents strictly comply with the terms of the letter of credit; require an issuer to notify a beneficiary of discrepancies; and provide that a prevailing party would be entitled to recover attorney’s fees and other expenses of litigation.

The bill would take effect on January 1, 1999. A brief overview of some of the bill’s provisions follows.

The bill would define “letter of credit” as “a definite undertaking that satisfies the requirements of section 5104 [described below] by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value”.

Under Section 5104, a letter of credit, confirmation, advice, transfer, amendment, or cancellation could be issued in any form that was a “record” and was authenticated by a signature and/or in accordance with the agreement of the parties or the standard practice referred to in the bill. “Record” would mean information that was inscribed on a tangible medium, or that was stored in an electronic or other medium and was retrievable in perceivable form.

The bill specifies that, except as otherwise provided, an issuer of a letter of credit would have to honor a presentation that, as determined by the standard practice, appeared on its face strictly to comply with the terms and conditions of the letter of credit. (“Presentation” would mean delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.) Except as otherwise provided and unless otherwise agreed with the applicant, an issuer would have to dishonor a presentation that did not appear to comply.

An issuer would have a reasonable time after presentation, but not beyond the seventh business day after receiving documents, to do one or more of the following:

- To honor (i.e., perform the issuer’s undertaking in the letter of credit to pay or deliver an item of value).
- To accept a draft or incur a deferred obligation, if the letter of credit provided for honor to be completed more than seven business days after presentation.

-- To give notice to the presenter of discrepancies in the presentation.

An issuer would be precluded from asserting as a basis for dishonor any discrepancy if timely notice were not given, or any discrepancy not stated in the notice if timely notice were given. Failure to give the required notice, however, or to mention fraud, forgery, or expiration in the notice would not preclude the issuer from asserting as a basis for dishonor fraud or forgery or expiration of the letter of credit before presentation.

An issuer would have to observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice would be a matter of interpretation for the court. The court would have to offer the parties a reasonable opportunity to present evidence of the standard practice.

The bill provides that reasonable attorney's fees and other expenses of litigation would have to be awarded to the prevailing party in an action in which a remedy was sought under Article 5.

MCL 440.1105 et al.

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz