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SFA BILL ANALYSIS

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House Bill 5228 (Substitute S-1 as reported)
Sponsor: Representative Andrew Richner
House Committee: Family and Civil Law
Senate Committee: Financial Services

CONTENT

The bill would amend Article 9 (Secured Transactions) of the Uniform Commercial Code to do the following:

-- Expand the types of property in which a creditor can take a "security interest" (an interest that allows the creditor to take the debtor's property, or collateral, in the event of default) to include promissory notes, payment intangibles, commercial tort claims, and health care insurance receivables; and include agricultural liens among the kinds of transactions that come under Article 9.
-- Allow the filing of a financing statement to "perfect" a security interest (i.e., make it enforceable ahead of the interests of other creditors of the debtor) even if there were another method of perfection.
-- For the purpose of determining which states' laws applied to interstate secured transactions, choose the state where the debtor was located (rather than the location of the collateral); and, for a debtor created by registration in a state, specify that the debtor's location would be the state where it was created.
-- Distinguish between transactions involving a consumer debtor and other transactions, and handle enforcement of a security interest differently in consumer transactions (e.g., by imposing additional duties on a secured party).
-- Include new rules dealing with secondary obligors (guarantors) and subordinate creditors.
-- Require all financing statements to be filed with the Secretary of State, except that financing statements involving timber or minerals, and fixture filings, would continue to be filed with a register of deeds. (Currently, financing statements covering farm products, farm equipment, and consumer goods also are filed with a register of deeds.)
-- Increase filing fees.
-- Require the Secretary of State or a register of deeds generally to file a record or respond to a request within two business days.
-- Establish additional penalties for noncompliance with the article, including filing a record that a person was not authorized to file.

The bill would take effect on July 1, 2001, and is tie-barred to Senate Bill 116 (which would increase fees payable to a register of deeds).

MCL 440.1105 et al. Legislative Analyst: S. Lowe

FISCAL IMPACT

State: The proposed revisions to Article 9 of the Uniform Commercial Code would affect the State primarily through the filing requirements. The bill would designate the Department of State as the central filing office and also increase the uniform filing fee from $3 to $10, with the charge for nonconforming filings increasing from $3 to $7. There also would be an increase in additional charges: $12 for filings over 100 pages and $10 for each name over two that was indexed. Record search fees would increase from $3 to $6. Additional charges of $6 for searches revealing over 100 records and $2 for printing a page, currently $1 per page, also would be imposed. The revenue received by the State from filing fees would increase due to greater levels of filing with the State and higher fees. The net impact is indeterminate since each locality maintains individual filing records and the number of filings that would shift to the State is unknown. In FY 1999-2000, the Department of State collected $2,492,700 in filing fees.

In order to meet the time limits for processing, the State would need to have the capability for electronic interface, both accepting and processing filings electronically. The technological enhancements necessary include computer hardware and software, electronic imaging, automation, and modernization of processes for faster processing. The Department is currently evaluating the cost of implementing these technological changes.

Local: Local governments would experience a loss of filing fee revenue as organizations would be required to file with the State. However, local units would continue to register fixture filings. With the filing fee increased by $7, the loss in revenue from reduced filing overall would be somewhat offset. The net impact is indeterminate since each locality maintains individual filing records.

Date Completed: 11-17-00 Fiscal Analyst: J. Runnels

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