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BILL ANALYSIS

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House Bill 5081 (Substitute H-1 as passed by the House)
House Bill 5082 (Substitute H-1 as passed by the House)
House Bill 5083 (Substitute H-1 as passed by the House)
Sponsor: Representative Matt Huuki (H.B. 5081)
Representative Kevin Cotter (H.B. 5082)
Representative Ellen Cogen Lipton (H.B. 5083)
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 2-23-12

CONTENT

All of the bills would amend the Uniform Commercial Code (UCC). House Bill 5081 (H-1) primarily would amend Article 1 (General Provisions). House Bill 5082 (H-2) primarily would amend Article 7 (Documents of Title). House Bill 5083 (H-1) would amend Article 9 (Secured Transactions).

All of the bills would take effect on July 1, 2013, and are tie-barred to each other.

The following is a very brief overview of the bills' key provisions, as identified by the National Conference of Commissioners on Uniform State Laws.

House Bill 5081 (H-1)

Article 1 of the UCC contains definitions and general provisions that, in the absence of conflicting provisions, apply as default rules governing matters covered by other articles of the UCC.

The bill would add the statement, "This article applies to a transaction to the extent that it is governed by another article of this act."

The bill would add a new Part 3 to Article 1, "Territorial Applicability and General Rules", containing default choice of law provisions. Under this part, except as otherwise provided, when a transaction bore a reasonable relation to Michigan and also to another state or nation, the parties could agree that the law either of this State or of the other state or nation would govern their rights and duties. In the absence of such an agreement, and subject to specific exceptions, the UCC would apply to transactions bearing an appropriate relation to this State.

Currently, subject to several exceptions, a contract for the sale of personal property is not enforceable beyond $5,000 unless it is in writing and meets criteria described in Article 1. The bill would delete this provision.

The bill provides that a course of performance or a course of dealing between the parties, or usage of trade, would be relevant in ascertaining the meaning of the parties' agreement, could give particular meaning to specific terms of the agreement, and could supplement or qualify the terms of the agreement. Currently, a course of dealing and usage of trade may be used to interpret an agreement.

House Bill 5082 (H-1)

Article 7 of the UCC governs the transfer of documents by which the rights in tangible goods are transferred. Documents of title may be negotiable (which may transfer more than the actual interests of the transferor) or non-negotiable (transferring only the actual interests of the transferor). Article 7 also governs other aspects of the transfer of rights in goods when they are stored or shipped, such as the liens of warehousemen and carriers, and the allocation of risk of loss.

The bill would amend Article 7, as well as definitions in Article 1, to recognize electronic documents of title. The bill would define "electronic document of title" as a document of title evidenced by a record consisting of information stored in an electronic medium; and would modify other definitions to treat electronic records and signatures as the equivalent of tangible documents.

The bill would adopt the concept of "control" in Article 7 as an alternative to the system of transferring tangible documents. The bill states, "A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." A system would satisfy this standard and a person would be considered to have control of an electronic document of title, if the document were created, stored, and assigned in a manner that met requirements described in the bill.

The bill specifies rules that would apply to a negotiable electronic document of title.

The bill states that the UCC would modify, limit, and supersede the Electronic Signatures in the Global and National Commerce Act (15 USC 7001-7031), but would not modify, limit, or supersede a provision pertaining to interstate or foreign commerce, or authorize the electronic delivery of certain notices.

The bill would amend Article 9 to refer to electronic documents and control in various provisions. The bill also would prescribe responsibilities of a secured party having control of an electronic document, in a section that applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

In addition, the bill would amend Article 1 to define "good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing, except as otherwise provided in Article 5 (Letters of Credit).

House Bill 5083 (H-1)

Article 9 of the UCC contains rules that govern secured transactions, which are transactions in which credit is granted and the creditor receives an interest in personal property of the debtor (the collateral). When a creditor's security interest is created, it must "attach" in order to be effective between the creditor and the debtor, and it must be "perfected" in order for the creditor to have priority in relation to other creditors of the debtor who have an interest in the collateral. Perfection usually occurs when a financing statement is filed with the State.

A financing statement must contain information identified in Article 9, including the name of the debtor. The bill would add specificity regarding the name of the debtor to be included, depending on whether the debtor was an individual or a registered organization, whether the collateral was held in a trust that was or was not a registered organization, or whether the collateral was being administered by the personal representative of a decedent.

In particular, if the debtor were an individual to whom the State had issued a driver license or personal identification card that had not expired, the financing statement would have to provide the name of the individual that was indicated on the license or ID card. If the State had issued more than one driver license or personal ID card to an individual, this requirement would refer to the license or card that was most recently issued. If the debtor were an individual to whom the State had not issued a driver license or personal ID card, the financing statement would have to provide the individual name of the debtor or his or her surname and first personal name.

The bill also contains rules that would govern the perfection of a security interest in collateral acquired after the debtor moved to another jurisdiction. Currently, perfection by filing a financing statement continues for four months after the jurisdiction in which the debtor is located changes. If the security interest attaches to collateral acquired after the move, however, there is no perfection unless and until the secured party perfects under the law of the new jurisdiction. The proposed rules would give the filer perfection for four months in after-acquired collateral.

Article 9 allows a person to file a "correction statement" if the person believes that a filed record is inaccurate or was wrongfully filed. The bill would refer, instead, to an "information statement". The bill also would allow a secured party to file an information statement if the secured party believed that an amendment to its financing statement was filed by a person who was not entitled to do so.

In addition, the bill would add a new part to Article 9 containing transition provisions for the amendments. The bill would repeal Article 11 of the UCC, which provided for the transition from an earlier version of the Code.

MCL 440.1101 et al. (H.B. 5081)
440.1201 et al. (H.B. 5082)
440.9105 et al. (H.B. 5083)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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