

BILL ANALYSIS

Senate Research Center
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S.B. 433
By: Carona
Business & Commerce
2/23/2001
Committee Report (Amended)

DIGEST AND PURPOSE

Currently, the National Conference on Commissioners of Uniform State Laws and the American Law Institute have recommended making technical amendments to the official text of Article 9 of the Uniform Commercial Code before its July 1, 2001 effective date. As proposed, S.B. 433 makes the technical changes to Chapter 9, Texas Business & Commerce Code, that the National Conference on Commissioners of Uniform State Laws and the American Law Institute have recommended.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 9.102(a)(11), (61), and (65), Business & Commerce Code, as effective July 1, 2001, to redefine "chattel paper," "original debtor," and "proceeds." Defines "monetary obligation."

SECTION 2. Amends Section 9.104(a), Business & Commerce Code, as effective July 1, 2001, to provide that a secured party has control of a deposit account if certain parties have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor.

SECTION 3. Amends Section 9.210(d), Business & Commerce Code, as effective July 1, 2001, to require a person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time to comply with the request within 14 days after the receipt by sending to the debtor an authenticated record if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest, rather than security interest, in the collateral.

SECTION 4. Amends Section 9.311(d), Business & Commerce Code, as effective July, 1, 2001, to provide that during any period in which collateral subject to a statute specified in Subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling, rather than selling or leasing, goods of that kind, this section does not apply to a security interest in that collateral created by that person, rather than person as debtor.

SECTION 5. Amends the heading to Section 9.317, Business & Commerce Code, as effective July 1, 2001, as follows:

Sec. 9.317. New heading: INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURE LIEN.

SECTION 6. Amends Section 9.317(a), Business & Commerce Code, as effective July 1, 2001, to provide that a security interest or agriculture lien, rather than an unperfected security interest or

agriculture lien, is subordinate to the rights of certain persons before the earlier of the time that the security interest or agriculture lien is perfected, or one of the conditions specified in Section 9.203(b)(3) is met and a financing statement covering the collateral is filed.

SECTION 7. Amends Section 9.323(b), Business & Commerce Code, as effective July 1, 2001, to provide that a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance, rather than advances, made more than 45 days after the person becomes a lien creditor, rather than while the security interest is perfected only, unless the advance is made under certain conditions, except as otherwise provided in Subsection (c).

SECTION 8. Amends Section 9.331(b), Business & Commerce Code, as effective July 1, 2001, to provide that this chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim, rather than an adverse claim, under Chapter 8.

SECTION 9. Amends Section 9.334(g), Business & Commerce Code, as effective July 1, 2001, to provide that the priority of the security interest under Subsection (f)(2), continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

SECTION 10. Amends Section 9.336(f), Business & Commerce Code, as effective July 1, 2001, to provide that if more than one security interest is perfected under Subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

SECTION 11. Amends Sections 9.406(b), (d), and (f), Business & Commerce Code, as effective July 1, 2001, to provide that subject to Subsection (h), notification is ineffective under Subsection (a) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if only a portion of the account, chattel paper, or payment intangible, rather than general intangible, has been assigned to that assignee. Sets forth that except as otherwise provided in subsection (e) and Sections 2A.303 and 9.407, and subject to Subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest gives rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note. Makes a conforming change.

SECTION 12. Amends Section 9.407(a), Business & Commerce Code, as effective July 1, 2001, to make conforming changes.

SECTION 13. Amends Sections 9.408(a) and (c), Business & Commerce Code, as effective July 1, 2001, to make conforming changes.

SECTION 14. Amends Section 9.409(a), Business & Commerce Code, as effective July 1, 2001, to provide that a term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense termination, right of termination, or remedy under the letter-of-credit right.

SECTION 15. Amends Section 9.504, Business & Commerce Code, as effective July 1, 2001, to provide that a financing statement sufficiently indicates the collateral that it covers if the financing statement provides certain information. Deletes "only."

SECTION 16. Amends Section 9.509(a), Business & Commerce Code, as effective July 1, 2001, to authorize a person to file an initial financing statement, amendment that adds collateral covered by a

financing statement, or amendment that adds a debtor to a financing statement only if the debtor authorizes the filing in an authenticated record or pursuant to Subsection (b) or (c).

SECTION 17. Amends Section 9.513(d), Business & Commerce Code, as effective July 1, 2001, to provide that the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse, except as otherwise provided in Section 9.510, for purposes of Sections 9.519(g), 9.522(a), and 9.523(c).

SECTION 18. Amends Sections 9.525(a) and (b), Business & Commerce Code, as effective July 1, 2001, to provide that the fee for filing and indexing a record under this subchapter other than an initial financing statement of the kind described in Subsection (b), rather than Section 9.502(c), is to be in certain amounts, with exceptions. Makes a conforming change.

SECTION 19. Amends Section 9.608(a), Business & Commerce Code, as effective July 1, 2001, to provide that if a security interest or agricultural lien secures payment or performance of an obligation, a secured party is required to apply or pay over for application the cash proceeds of collection or enforcement under Section 9.607, rather than under this section, in order to meet certain conditions. Provides that if a security interest or agricultural lien secures payment or performance of an obligation a secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9.607, rather than under this section, unless the failure to do so would be commercially unreasonable.

SECTION 20. Amends Section 9.613, Business & Commerce Code, as effective July 1, 2001, to provide that, except in a consumer-goods transaction, the contents of a notification of disposition are sufficient if the notification states the time and place of a public disposition, rather than sale, or the time after which any other disposition is to be made.

SECTION 21. Amends Sections 9.615(a) and (c), Business & Commerce Code, as effective July 1, 2001, to require a secured party to apply or pay over for application the cash proceeds of disposition under Section 9.610 in a specified order to meet certain conditions. Provides that a secured party need not apply or pay over for application noncash proceeds of disposition under Section 9.610, rather than under this section, unless the failure to do so would be commercially unreasonable.

SECTION 22. Amends Sections 9.625(b) and (g), Business & Commerce Code, as effective July 1, 2001, to authorize a loss caused by a failure to comply, rather than to comply with a request under Section 9.210, to include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing. Authorizes the secured party, if it fails to comply with a request regarding a list of collateral or a statement of account under Section 9.210, to claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

SECTION 23 (a). Amends Sections 3.02-3.08, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999, and reenacts them as Chapter 9G, Business & Commerce Code, as follows:

SUBCHAPTER G. TRANSITION PROVISIONS

Sec. 9.701. EFFECTIVE DATE OF REVISIONS. Defines "revision." Provides that the revision takes effect July 1, 2001.

Sec. 9.702. SAVING CLAUSE. Makes changes for purposes of recodification. Redesignated from Section 3.02, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 9.703. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. Makes changes for proposed recodification. Redesignated from Section 3.03, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 9.704. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. .
Makes changes for purposes of recodification. Redesignated from Section 3.04, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 9.705. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.
Makes changes for purposes of recodification. Redesignated from Section 3.05, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 9.706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. Makes changes for purposes of recodification. Redesignated from Section 3.06, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 9.707. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.
Defines “pre-effective-date financing statement.” Authorizes a person to add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing only in accordance with the law of the jurisdiction governing perfection as provided in Subchapter C, after the revision takes effect. Authorizes the effectiveness of a pre-effective-date financing statement to also be terminated in accordance with the law of the jurisdiction in which the financing statement is filed. Authorizes the information in a pre-effective-date financing statement, except as otherwise provided in Subsection (d), to be amended after the revision takes affect only if certain conditions are met. Authorizes the effectiveness of a pre-effective-date financing statement to be continued only under sections 9.705(d) and (f) or Section 9.706 if the law of this state governs perfection of a security interest. Authorizes the effectiveness of a pre-effective-date financing statement filed in this state, whether or not the law of this state governs perfection of a security interest, to be terminated after the revision takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9.706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Subchapter C as the office in which to file a financing statement.

Sec. 9.708. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. Makes changes for purposes of recodification. Redesignated from Section 3.07, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.

Sec. 9.709. PRIORITY. Makes changes for purposes of recodification. Redesignated from Section 3.08, Chapter 414, Acts of the 76th Legislature, Regular Session, 1999.
Repealer: Section 3.01 (Effective Dates), Chapter 414,; Acts of the 76th Legislature, 1999.

SECTION 24. Amends Section 1.105(b), Business & Commerce Code, as effective July 1, 2001, to provide that where one of the listed provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified, including law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens.

SECTION 25. Provides that nothing in Chapter 9, Business & Commerce Code, as effective July 1, 2001, preempts or otherwise affects any limitation or prohibition provided by another law of this state against assignment of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended.

SECTION 26. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 11. Amends As Filed S.B. 433, Section 9.406(b)(3)(A), Business & Commerce Code, as follows:

- Amendment changes As Filed S.B. 433 to include previously deleted word “intangible.”

SECTION 25. Adds new Section regarding limitation or prohibition provided by another law.

SECTION 26. Redesignated.