

## **BILL ANALYSIS**

H.B. 2452  
By: Bailey  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

House Bill No. 2452 contains the revision of Article 7 of the Uniform Commercial Code, codified as Chapter 7 of the Texas Business and Commerce Code, as promulgated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") to be passed in all 50 states.

UCC Article 7, previously entitled "Warehouse Receipts, Bills of Lading and Other Documents of Title," now renamed "Documents of Title" by the bill, has not been substantially amended since 1951 and, as a result, is badly out of date in its provisions which govern the storage and shipment of tangible goods for commercial purposes.

House Bill No 2452, provides for an electronic system of transfer for electronic documents of title, not previously authorized by law but regularly used in practice, while maintaining provisions for the traditional paper system of documents of title. The bill also updates and clarifies existing rules of law governing documents of title including deletion of references to tariffs and regulations which no longer exist.

### **RULEMAKING AUTHORITY**

House Bill No. 2452 does not expressly grant any new rule making authority to any state officer, board, institution, department or agency.

### **SECTION-BY-SECTION ANALYSIS**

SECTION 1. Amends Chapter 7, Business and Commerce Code, by repealing all of existing Chapter 7 and replacing it with revised language.

The majority of the revisions do not change the substance of existing law but update Chapter 7 to provide for electronic documents of title and to recognize the use of electronic transactions in domestic and international commerce. This is in accord with the Commissioners' revision of other articles of the UCC to recognize and accommodate electronic transactions. Texas has adopted electronic-commerce amendments to such other chapters of Title 1 of the Business and Commerce Code (the UCC chapters) as the Commissioners have revised for this purpose, with the exception of Chapter 2 (sales) and Chapter 2A (leases), which have not yet been introduced.

Most of those revisions that are or might be considered substantive are likewise intended to accommodate electronic transactions or to reflect current commercial practices.

The revisions to Chapter 7 may fairly be summarized as follows:

A document of title may be issued in tangible form or electronic form at the election of the issuer. It may be converted to the other form at the request of the person who is entitled under the document.

An electronic document may be subject to control as defined in the UCC. Control is a concept that already occurs in other articles of the UCC, such as those on investment securities and secured transactions. The person with control of an electronic document is the person who has rights under the document.

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An electronic document may be negotiable or nonnegotiable. If the former, it may be transferred by negotiation or due negotiation, which require delivery of the document. Delivery of an electronic document occurs by voluntary transfer of control.

Some provisions of revised Chapter 7 apply only to tangible documents of title, such as those relating to tangible bills of lading in a set, liability of an indorser, the right to compel endorsement, and the rule that a good-faith purchaser can hold the issuer to an unauthorized completion of a blank in the document.

Most other provisions of current Chapter 7 have been reworked to apply to both tangible documents of title and electronic documents of title, such as those relating to a consignee in possession or control giving directions regarding the goods, surrender of possession or control to obtain a substitute document, surrender of possession or control when receiving delivery of the goods, rights of due negotiation when a person is deprived of possession or control of a negotiable document, court-ordered issuance of substitute documents when possession or control of the original document was not surrendered, and judicial process when possession or control of a negotiable document was not surrendered to the bailee.

References to tariffs are eliminated because of deregulation in the shipping industry.

Warehouses are no longer required to state limitations on its liability per article or per unit of weight but may do so without such itemization or allocation. They also may impose reasonable requirements on presentment of claims. A warehouse lien may arise under a storage agreement even if a warehouse receipt is not issued.

Carriers' liens are expanded to reach proceeds in the carrier's possession, and Chapter 7 now expressly authorizes the use of transportation agreements to limit a carrier's liability for breach of its duty of care. In what the Commissioners view as a clarification of existing law, Chapter 7 now provides that a carrier is protected from liability for misdelivery when complying with instructions from certain parties.

SECTION 2. Amends Chapter 1, Business and Commerce Code, as follows:

SEC. 1.201. GENERAL DEFINITIONS. These amendments amend definitions in Chapter 1 (general provisions for the UCC chapter) as necessary to implement the provisions of Section 1 of this bill.

SECTION 3. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.103. DEFINITIONS AND INDEX OF DEFINITIONS. This amendment adds a cross-reference in Chapter 2 (sales) to a provision in Chapter 7 as necessary to implement the provisions of Section 1 of this bill.

SECTION 4. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.104. DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING AGENCY". This amendment amends a definition in Chapter 2 (sales) as necessary to implement the provisions of Section 1 of this bill.

SECTION 5. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.310. OPEN TIME FOR PAYMENT OR FUNNING OF CREDIT; AUTHORITY TO SHIP UNDER RESERVATION. These amendments amend a provision relating to delivery of documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 6. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.401. PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION. These amendments amend a provision relating to delivery of documents of title as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 7. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.503. MANNER OF SELLER'S TENDER OF DELIVERY. This amendment amends a provision relating to dishonor of drafts as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 8. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.505. SELLER'S SHIPMENT UNDER RESERVATION. These amendments amend a provision relating to security interests or other rights in goods as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 9. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.506. RIGHTS OF FINANCING AGENCY. This amendment amends a provision relating to defects in documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 10. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.509. RISK OF LOSS IN THE ABSENCE OF BREACH. These amendments amend a provision relating to risk of loss as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 11. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE. This amendment amends a provision relating to defects in documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 12. Amends Chapter 2, Business and Commerce Code, as follows:

SEC. 2.705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. These amendments make a nonsubstantive change in terminology to be consistent with the provisions of Section 1 of this bill and amend a provision relating to surrender of documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 13. Amends Chapter 2A, Business and Commerce Code, as follows:

SEC. 2A.103. DEFINITIONS AND INDEX OF DEFINITIONS. These amendments amend definitions in Chapter 2A (leases) as necessary to implement the provisions of Section 1 of this bill.

SECTION 14. Amends Chapter 2A, Business and Commerce Code, as follows:

SEC. 2A.514. WAIVER OF LESSEE'S OBJECTIONS. This amendment amends a provision relating to defects in documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 15. Amends Chapter 2A, Business and Commerce Code, as follows:

SEC. 2A.526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. This amendment makes a nonsubstantive change in terminology to be consistent with the provisions of Section 1 of this bill.

SECTION 16. Amends Chapter 4, Business and Commerce Code, as follows:

SEC. 4.104. DEFINITIONS AND INDEX OF DEFINITIONS. This amendment adds a cross-reference in Chapter 4 (bank deposits and collections) to a provision in Chapter 7 as necessary to implement the provisions of Section 1 of this bill.

SECTION 17. Amends Chapter 4, Business and Commerce Code, as follows:

SEC. 4.210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. This amendment amends a provision relating to possession and control of documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 18. Amends Chapter 8, Business and Commerce Code, as follows:

SEC. 8.103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. This amendment excludes documents of title from the definition of "financial asset" in some situations as necessary to implement the provisions of Section 1 of this bill.

SECTION 19. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.102. DEFINITIONS AND INDEX OF DEFINITIONS. This amendment adds a cross-reference in Chapter 9 (secured transactions) to a provision in Chapter 7 as necessary to implement the provisions of Section 1 of this bill.

SECTION 20. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES. This amendment amends a provision relating to documents as collateral as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 21. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. This amendment amends a provision relating to documents as collateral as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 22. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. These amendments amend a provision relating to a secured party's duties when documents are collateral as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 23. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. This amendment amends a provision relating to the law governing some aspects of tangible negotiable documents as collateral as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 24. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9. 310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. This amendment amends a provision relating to perfection of security interests in documents by control as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 25. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. This amendment amends a provision relating to perfection of security interests in documents by control as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 26. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. This amendment amends a provision relating to perfection of security interests in tangible negotiable documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 27. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.314. PERFECTION BY CONTROL. This amendment amends a provision relating to perfection of security interests in documents by control as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 28. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OF AGRICULTURAL LIEN. These amendments amend a provision relating to transfer of tangible and electronic documents free of security interests as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 29. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. This amendment amends a provision relating to transfer of tangible documents free of security interests as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 30. Amends Chapter 9, Business and Commerce Code, as follows:

SEC. 9.601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. This amendment amends a provision relating to rights of a secured party in control of documents as necessary to implement the provisions of Section 1 of this bill authorizing electronic documents.

SECTION 31. This act applies only to documents of title that are issued, and bailment's that arise, after the effective date.

SECTION 32. Documents of title that are issued and bailments that arise, before the effective date are governed by the law in effect before the effective date.

#### **EFFECTIVE DATE**

September 1, 2005.