

## **BILL ANALYSIS**

C.S.H.B. 1617  
By: Deshotel  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The National Conference of Commissioners on Uniform State Laws recently presented amendments to Article 9 of the Uniform Commercial Code, the uniform law on secured transactions. C.S.H.B. 1617 seeks to incorporate those amendments into state law.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1617 amends the Business & Commerce Code to incorporate into provisions of law the 2013 amendments to the Uniform Commercial Code relating to secured transactions. The bill defines "2013 amendments" to mean the amendments to provisions of law relating to secured transactions enacted by the provisions of this bill and establishes that the amendments take effect July 1, 2013.

C.S.H.B. 1617 specifies that a secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned and establishes that, if the record or records comprising the chattel paper are created, stored, and assigned in a specified manner, a system satisfies that condition, in addition to a secured party having control of electronic chattel paper. The bill specifies, in provisions relating to the manner in which the record or records comprising the chattel paper are created, stored, and assigned, that copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party, rather than only with the secured party's participation.

C.S.H.B. 1617 specifies, in provisions of law authorizing certain registered organizations and certain bank branches or agencies to designate the entity's state of location, that such designation includes the entity's main office, home office, or other comparable office. The bill includes among the conditions under which the filing of a financing statement is not necessary or effective to perfect a security interest in property that the property is subject to a certificate of title statute of Texas or rules adopted under such a statute to the extent the statute or rules provide for a security interest to be indicated on the certificate of title as a condition or result of perfection or such alternative to notation as may be prescribed by those statutes or rules. The bill removes as a condition under which the filing of a financial statement is not necessary or effective to perfect a security interest in property that the property is subject to statutory provisions relating to certificates of title for motor vehicles and for vessels and outboard motors and to documents of title for manufactured homes.

C.S.H.B. 1617 establishes specified rules applicable to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction and specified rules applicable if a financing statement naming an original debtor is filed pursuant to

the law of the jurisdiction in which the debtor is located and the new debtor is located in another jurisdiction. The bill specifies that a buyer other than a secured party who takes free of a security interest if the buyer gives value without knowledge of the security interest and before it is perfected is a buyer of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certified security, rather than a buyer of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property. The bill specifies, in a provision establishing the priority of security interests that is created by a new debtor, that a security interest created by a new debtor in collateral in which the new debtor has or acquires rights and perfected by a filed financing statement that would be ineffective to perfect the security interest, but for the application of statutory provisions relating to the effectiveness of a financing statement if a new debtor becomes bound by a security agreement and provisions of the bill relating to a financing statement naming an original debtor filed pursuant to a law of a jurisdiction in which the debtor is no longer located, is subordinate to a security interest in the same collateral that is perfected other than by such a filed financing statement.

C.S.H.B. 1617 creates an exception to the inapplicability to the sale of a payment intangible or promissory note of statutory provisions making a term in an agreement between an account debtor and an assignor or in a promissory note ineffective under certain conditions if the sale is pursuant to a disposition of collateral after default or an acceptance of collateral in full or partial satisfaction of obligation. The bill makes an assignment of an account, chattel paper, payment intangibles, or promissory note subject to statutory provisions governing the assignment of the right to receive installment payments of state lottery prizes. The bill creates an exception to the inapplicability to a security interest in a payment intangible or promissory note of statutory provisions making restrictions on assignment of certain promissory notes, health-care-insurance receivables, and certain general intangibles ineffective if the sale is pursuant to a disposition of collateral after default or an acceptance of collateral in full or partial satisfaction of obligation.

C.S.H.B. 1617 includes as a condition under which a record of mortgage sufficiently provides the name of a debtor who is an individual in satisfaction of certain requirements for a financing statement that the record provides the individual name of the debtor, the name of the individual that is indicated on a consular identification card that has been issued to the individual and has not expired, or the individual's surname and first personal name of the debtor, if the debtor is an individual to whom the state has not issued a driver's license or personal identification card that has not expired. The bill includes, as a condition under which a record of mortgage sufficiently provides the name of such a debtor, that the record provides the name of the individual that is shown on the driver's license or personal identification card, if the debtor is an individual to whom the state has issued a driver's license or, in lieu of a driver's license, a personal identification card that has not expired. The bill, in the requirement that a financing statement sufficiently provide the name of the debtor, changes the specific information that must be provided based on the debtor's circumstances and the conditions under which the collateral is held. The bill provides for the meaning of "name of the settlor or testator" as referenced in that provision of the bill. The bill establishes that the name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under provisions of the bill relating to the requirement that the name of the debtor be sufficiently provided in a financing statement if the collateral is being administered by the personal representative of a decedent. The bill specifies, if the state has issued an individual more than one driver's license or, if none, more than one identification card that has not expired, the driver's license or identification card, as applicable, that was issued most recently is the one referenced in the provision of the bill relating to the requirement that the name of the debtor be sufficiently provided in a financing statement if the debtor is an individual to whom the state has issued such a license or card.

C.S.H.B. 1617 establishes as grounds for a financing statement being either effective or ineffective for specified purposes that the name a filed financing statement provides for a debtor becomes insufficient as the name of the debtor, under the requirement that the financing statement sufficiently provide the debtor's name, so that the financing statement becomes

seriously misleading under provisions of law relating to the effect of errors or omissions in a financing statement. The bill specifies, in the condition for making a financing statement effective until a termination statement is filed that a filed financing statement indicate the debtor is a transmitting utility, that the financing statement is an initial financing statement. The bill authorizes any person named as a debtor or a secured party to file an information statement, rather than a correction statement, with respect to a record if the person believes that the record is inaccurate or was wrongfully filed. The bill specifies, in the provision authorizing a secured party exercising the right of a debtor to enforce a mortgage nonjudicially to record in the office in which a record of the mortgage is recorded a sworn affidavit in recordable form stating that a default has occurred, that the statement asserts that a default has occurred with respect to the obligation secured by the mortgage.

C.S.H.B. 1617 makes the 2013 amendments provided by the bill applicable to a transaction or lien within the scope of those provisions, even if the transaction or lien was entered into or created before July 1, 2013, and establishes that the 2013 amendments do not affect an action, case, or proceeding commenced before July 1, 2013. The bill sets out transition provisions for the 2013 amendments relating to the effectiveness of certain transactions performed before July 1, 2013, including the perfection of a security interest, the filing of certain financing statements or continuation statements, and the addition or deletion of collateral covered by a pre-effective-date financing statement. The bill authorizes a person to file an initial financing statement or a continuation statement if the secured party of record authorizes the filing and the filing is necessary either to continue the effectiveness of a financing statement filed before July 1, 2013, or to perfect or continue the perfection of a security interest. The bill establishes that the 2013 amendments determine the priority of conflicting claims to collateral and specifies that, if the relative priorities of the claims were established before July 1, 2013, statutory provisions governing secured transactions as they existed before amendment determine priority.

C.S.H.B. 1617 defines "pre-effective-date financing statement" and "public organic record." The bill redefines "authenticate" to establish that its meaning includes, with present intent, attaching to or logically associating with the record an electronic sound, symbol, or process and to remove from its meaning executing or otherwise adopting a symbol, or encrypting or similarly processing a record in whole or in part with the present intent of the authenticating person to identify the person and adopt or accept a record. The bill redefines "certificate of title" to specify that the term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The bill redefines "registered organization" to include in the term an organization formed solely under the law of a single state or the United States and to specify that such an organization is formed or organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The bill removes from the definition the specification that such an organization is required to maintain a public record showing the organization to have been organized. The bill includes in the term a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state. The bill amends the definition of "jurisdiction of organization" to make a conforming change and makes other conforming changes and nonsubstantive changes.

C.S.H.B. 1617 repeals Chapter 11, Business & Commerce Code, relating to the effective date and transition provisions for the 1973 amendments to the Uniform Commercial Code governing secured transactions.

### **EFFECTIVE DATE**

July 1, 2013.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1617 differs from the original by specifying that, if a debtor is an individual to whom the state has issued a driver's license or, in lieu of a driver's license, a personal identification card that has not expired, the record provide the name of the individual that is indicated on the driver's license or personal identification card as a condition under which a record of mortgage sufficiently provides the name of a debtor who is an individual in satisfaction of certain requirements for a financing statement, whereas the original adds as a condition that the record provide the name of the individual that is shown on the individual's driver's license or, if none, the identification card, without specifying the expiration of the license or card.

C.S.H.B. 1617 adds a provision not included in the original to include as a condition under which a record of mortgage sufficiently provides the name of a debtor who is an individual in satisfaction of certain requirements for a financing statement that the record provide the name of the individual that is indicated on a consular identification card that has been issued to the individual and has not expired, or the individual's surname and first personal name of the debtor, if the debtor is an individual to whom the state has not issued a driver's license or personal identification card that has not expired.

C.S.H.B. 1617 differs from the original by making a conforming change.