

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 748
Finance

(Senator Middleton)

Commercial Law - Uniform Commercial Code - Secured Transactions - Revision

This bill alters various provisions of Title 9 of the Maryland Uniform Commercial Code (MUCC) relating to secured transactions. The bill also establishes various transition provisions for the 2012 amendments contained within the bill.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: The State Department of Assessments and Taxation can likely absorb any impact on its workload and programming needs with existing budgeted resources. No impact on revenues.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Electronic Chattel Paper

The Bill: The bill clarifies that, in order for a secured party to have control of electronic chattel paper, a system employed for evidencing the transfer of interests in the chattel paper must reliably establish that the secured party is the person to which the chattel paper was assigned.

Current Law: A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in a specified manner.

Continued Perfection of Security Interest Following Change in Governing Law

The Bill: The bill establishes specified rules applicable to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction. Additionally, the bill establishes specified rules regarding when a financing statement naming an original debtor is filed pursuant to State law regarding the perfection of a security interest and the new debtor is located in another jurisdiction.

Current Law: Unless otherwise provided by State law, while a debtor is located in a jurisdiction, a jurisdiction's local law governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral. A security interest perfected pursuant to the jurisdiction's local law remains perfected until the earliest of (1) the length of time in which the perfection would have ceased in that jurisdiction; (2) the expiration of four months after a change of the debtor's location to another jurisdiction; or (3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

Priority of Security Interests Created by New Debtor

The Bill: The bill alters the circumstances in which a security interest created by a new debtor is perfected.

Current Law: Generally, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under a specified provision of Title 9 of MUCC is subordinate to a security interest in the same collateral which is perfected by a different method.

Record of Mortgage as Financing Statement

The Bill: The bill alters the circumstances in which a record of a mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut. In addition to other requirements, a record of a mortgage must satisfy the requirements for a financing statement but (1) the record is not required to indicate that it is to be recorded in the land records; and (2) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is a specified individual.

Current Law: A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if (1) the record indicates the goods or accounts that it covers; (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut; (3) the record satisfies the requirements for a financing statement other than an indication that is to be recorded in the land records; and (4) the record is recorded.

Name of Debtor and Secured Party

The Bill: The bill alters the circumstances in which a financing statement sufficiently provides the name of a debtor. The requirements vary depending on whether the debtor is a registered organization (or collateral is held in a trust that is a registered organization), collateral is administered by the personal representative of a decedent, collateral is held in a trust that is not a registered organization, or the debtor is an individual.

Current Law: Whether a financing statement sufficiently provides the name of the debtor depends on the type of debtor:

- if the debtor is a registered organization, the financing statement must provide the name of the debtor indicated on the public record of the debtor's jurisdiction of organization;
- if the debtor is a decedent's estate, the financing statement must provide the name of the decedent and indicate that the debtor is an estate; and
- if the debtor is a trust or a trustee acting with respect to property held in trust, the financing statement generally must provide the name specified for the trust on its organic documents and indicate, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust.

In other cases, if the debtor has a name, the financing statement must provide the individual or organizational name of the debtor. If the debtor does not have a name, the financing statement must provide the name of the partners, members, associates, or other persons comprising the debtor.

A financing statement that sufficiently provides a debtor's name is not rendered ineffective by the absence of either a trade name or other name of the debtor or, generally, names of partners, members, associates, or other persons comprising the debtor.

Filing of an Information Statement

The Bill: The bill authorizes a secured party of record to file an information statement with respect to a record even though the secured party believes that the person that filed the record was not entitled to do so. The secured party must identify the record by specified means, indicate that the filing is an information statement, and provide the basis for the person's belief that the person that filed the record was not entitled to do so.

The bill alters any reference to a "correction statement" to be an "information statement." The bill also prohibits a filing office from refusing to accept specified documents in the form and format set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by the American Law Institute and the Uniform Law Commission.

Current Law: A person may file in a filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed. When filing a correction statement, the person must identify the record by specified means, indicate that the filing is a correction statement, and provide the basis for the person's belief that the record is inaccurate and indicate any appropriate corrections.

Background: As of February 2012, 10 states have enacted identical revisions to Title 9. Another 20 states and the District of Columbia currently have amendments pending in the jurisdiction's legislature.

Additional Information

Prior Introductions: None.

Cross File: HB 713 (Delegate Feldman) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), State Department of Assessments and Taxation, Uniform Law Commission, Department of Legislative Services

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