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FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/09
LAST UPDATED 02/03/09 **HB** _____

SPONSOR McSorley

SHORT TITLE Uniform Commercial Code Amendments **SB** 74/aSCORC

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation amendment repeals the following statutes dealing with recording and assignments:

- Section 48-7-2, Assignment of mortgages, recording, person entitled to payment, effect of failure to record and assignee's action against assignor;
- Section 48-7-3, Recording of prior assignments, effect of failure to record and actual notice of assignments binds mortgagor.

The amendment also deletes Section 18 in the bill. Section 55-9-503 NMSA 1978 (being Laws 2001, Chapter 139, Section 74) are not now amended by this bill. This section governs the filing of a financing statement. References to an identification card are removed.

The amendment also changes the effective date from July 1, 2009 to January 1, 2010.

Synopsis of Original Bill

House Bill 74 amends several provisions of the New Mexico Uniform Commercial Code (UCC).

The following are substantive amendments to the UCC:

It amends the definition of “course of performance” in NMSA Section 55-1-303(f) to subject the conduct of parties to a commercial transaction, which could be relevant to show a waiver of a term contained in a written contract, also to NMSA Section 55-2A-208 which governs the modification, recession or waiver of a lease contract for the lease of goods.

The bill also amends NMSA Section 55-3-103 which is the definitions section relating to negotiable instruments, to add provisions defining “consumer account”; “consumer transaction”; “principle obligor”; and “secondary obligor”. The amendments to this section also delete a cross-referenced definition of “bank” found in NMSA Section 55-4-105; and add a cross-referenced definition for “account” found in NMSA Section 55-4-104.

It also amends NMSA Section 55-3-106 which governs an unconditional promise or order to pay a sum of money (included in the definition of “negotiable instrument” in NMSA Section 55-3-104) to substitute the term “record” for the term “writing” with regard to determining whether that promise or order to pay is unconditional or conditional. The term “record” is currently defined in NMSA Section 55-1-201(b)(31) as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form”.

It also amends NMSA Section 55-3-116 to eliminate a provision that currently states that the discharge of one party having joint and several liability to pay on a negotiable instrument does not affect the right of another party, who also has joint and several liability to pay on a negotiable instrument, to receive contribution from the party discharged.

It also amends NMSA Section 55-3-119 to substitute “in a record” for “written” notice of litigation over a negotiable instrument from the defendant to a third party who may be answerable for payment and who may want to defend or else be bound by determinations of fact during the litigation.

It also amends NMSA Section 55-3-305 regarding defenses and claims in a recoupment action in a commercial transaction to enforce the obligation of a party to pay on a negotiable instrument to include, by operation of law, statements in a negotiable instrument to the effect that the rights of a holder or transferee of a negotiable instrument are subject to a claim or defense that the issuer could assert against the original payee, if the inclusion of such statements are required by any law other than a law contained in the Uniform Commercial Code. Amendments to that section also provide that a holder or transferee of a negotiable instrument, who is liable under such statements to the issuer of the negotiable instrument, shall be entitled to indemnification from the seller of the goods unless the holder’s liability is based upon their own actionable misconduct. The

amendments to that section also make it subject to law other than those in Article 3 (negotiable instruments) of the Uniform Commercial Code.

It also amends NMSA Section 55-3-312 governing lost, destroyed, or stolen checks to allow a declaration of loss statement to be made “in a record”, as opposed to a “written” statement in current law.

It also amends NMSA Section 55-3-419 governing payment on negotiable instruments that are signed by “accommodation” parties (third persons incurring liability to pay on the negotiable instrument for the benefit of an “accommodated” party to the instrument). The amendments provide that if the signature of the accommodation party is accompanied by words indicating that the party guarantees payment, or is signed in some other manner that does not unambiguously indicate an intention by the accommodation party to guarantee collection from the accommodated party, rather than payment, the signer is obligated to pay on the instrument without prior resort to the accommodated party. The amendments also allow the accommodation party, “in proper circumstances”, to obtain relief that requires the accommodated party to perform its obligations on the instrument.

It also amends NMSA Section 55-3-602 governing payment on a negotiable instrument to add language defining the rights and obligations of parties after a “note” as a type of negotiable instrument has been transferred. The amendments to this section also describe actions which indicate the instrument has been “signed” with respect to a record which is not in “writing”.

FISCAL IMPLICATIONS

There are no fiscal implications to the State

SIGNIFICANT ISSUES

This bill amends New Mexico’s version of the UCC to in some ways conform to the most recent version issued by the National Conference of Commissioners on Uniform State Laws. However, the bill does not appear to adopt that version without some modification. For example, the bill adds language to NMSA Section 55-3-305 regarding indemnification by a seller of goods which does not appear to be contained in Article 3, section 3-305 of the Model Act. The bill’s amendments to NMSA Section 55-9-503 requiring the name of an individual debtor match the name on certain documents also do not appear to be contained in the model act.

The bill would allow certain notifications and signatures required by various sections of the U.C.C. to be given by “record”, as opposed to being given “in writing”. The term “record” is currently defined in NMSA Section 55-1-201(b)(31) as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form”. These amendments would presumably allow those notifications and signatures to be given by electronic mail or by instant messaging.

OTHER SUBSTANTIVE ISSUES

The National Conference of Commissioners on Uniform State Laws NCCUSL mission is to

provide states with non-partisan, well-conceived and well-drafted legislation bringing clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.

The NCCUSL has worked for the uniformity of state laws since 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are members of the bar. While some commissioners serve as state legislators, most are practitioners, judges, and law professors. They serve for specific terms, and receive no salaries or fees for their work with the NCCUSL.

The state uniform law commissioners come together as the NCCUSL for one purpose—to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It must be emphasized that the Conference can only propose—no uniform law is effective until a state legislature adopts it.

The NCCUSL is a working organization. The uniform law commissioners participate in drafting specific acts; they discuss, consider, and amend drafts of other commissioners; they decide whether to recommend an act as a uniform or a model act; and they work toward enactment of NCCUSL acts in their home jurisdictions.

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