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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/15
LAST UPDATED 03/19/15 **HB** 85/aHJC/aSJC

SPONSOR Alcon

SHORT TITLE Commercial Code & Voidable Transactions **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Regulation & Licensing Division (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to House Bill 85 strikes HJC amendment 4 and returns the section heading for Section 56-10-23 to that in the existing statute (EXTINGUISHMENT OF CAUSE OF ACTION).

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 85 makes technical corrections to the bill. In addition, as to the Uniform Commercial Code (UCC), it:

- adds a new subsection to the temporary provision section of dealing with documents of title under Article 7 of the UCC as it relates to any laws governing forms or contents of those documents or the services or facilities to be afforded by bailees or otherwise regulating their businesses which subjects are not specifically addressed in the UCC. Violation of such laws do not affect the status of a document of title that otherwise conforms to the UCC definition of such a document.

As to the Uniform Voidable Transactions Act (UVTA), the amendment:

- adds a new subsection to its supplemental provisions to clarify it is not the exclusive law on the subject of voidable transactions and obligations, that the UVTA operates independently of rules in organic law limiting distributions of equity owners of business organizations, and that compliance with those rules does not prevent a distribution from being voidable under the UVTA;
- adds a new subsection to the new section governing series organizations providing that the UVTA does not itself authorize or prohibit the creation of protected series or series organizations; and
- adds a new subsection to its applicability section as to a transfer made or obligation incurred before January 1, 2016 and any rights, obligations or interests resulting from that transfer or obligation, which are governed by the UVTA as if it had not been enacted, but may be terminated, completed, consummated or enforced pursuant to the UVTA.

Synopsis of Original Bill

House Bill 85, for the Courts, Corrections and Justice Committee, amends two uniform acts that have been adopted in New Mexico. In addition to the numerous technical changes that are made, including providing for electronic activities, the substantive changes include:

Uniform Commercial Code (UCC):

- As to all types of leases for goods only (not real property), clarifies to which other section of article 2A a lessor should refer regarding damages for breach of a lease, which can occur when a lessee refuses to accept the leased goods, fails to make payments on the lease, repudiates the lease or otherwise fails to perform the bargain in a manner that impairs the value of the lease (Section 1); and
- As to processing of negotiable instruments, particularly payment orders (like a bank check) cancellations and amendments, allows the designation of different cut-off times for different categories of these items (Section 3).

Uniform Fraudulent Transfer Act:

- Changes name to Uniform Voidable Transactions Act (UVTA) (Section 9);
- Clarifies that the presumption of insolvency does not apply when a debt remains unpaid due to a bona fide dispute, and that otherwise the presumption of insolvency imposes on the debtor the burden of proving the nonexistence of insolvency is more probable than its existence (Section 10);
- Clarifies the creditor has the burden of proof (by a preponderance of the evidence) when seeking to void a transfer or obligation in certain circumstances (Sections 12 and 13);
- Clarifies (1) that a recipient of transferred goods can defend against voiding a transaction that transferred goods to the recipient if the recipient exchanged fair value for them; (2) that a creditor can void a transaction only against a party that received the goods directly from the debtor or received and passed them on to another party; (3) allows voiding of a transaction when the enforcement of a security interest involves acceptance of factored collateral; and (4) burdens of proof for various matters related to creditors voiding transactions (Section 16);

- Adds a new section determining a debtor’s location (residence, only place of business or chief executive office), which in turn determines the law governing enforcement of the Act (Section 19); and
- Adds a new section governing protected series organizations, a business form in which more than one distinct entity is formed as part of a larger business enterprise. Risks and liabilities are attributed to a component part rather than the greater whole when incurred by that component, and to the whole series when they are incurred by the series (Section 21).

The effective date of Sections 1 through 7 of HB 85 (UCC changes) is July 1, 2015; for Sections 8 through 23 (UVTA changes), it is January 1, 2016.

FISCAL IMPLICATIONS

Responding agencies report no fiscal impact on the State.

SIGNIFICANT ISSUES

AOC reports the national conference of commissioners on uniform state laws periodically proposes changes to the UCC and other uniform acts. These proposed changes arise from caselaw from state and federal court, changes in the way business is conducted and from changes in the bankruptcy statutes and rules. The UCC and related uniform acts provide consistent business expectations across jurisdictions for transactions in goods, commercial paper and intangibles such as securities and debt obligations. States that do not stay apace with the rest of the nation in adopting these updates may be faced with the prospect of having rules for commercial conduct that are not consistent with the way business is done elsewhere.

MD/bb/je