

## **BILL ANALYSIS**

S.B. 1563  
By: Estes  
Financial Institutions  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The National Conference of Commissioners on Uniform State Laws promulgated changes to Articles 3 and 4 of the Uniform Commercial Code. In Texas, Chapters 3, Business & Commerce Code, (Article 3 of the Uniform Commercial Code or UCC) governs negotiable instruments and Chapter 4 governs bank deposits and collections.

The purpose of this bill is to update provisions of Chapters 3 and 4, Business & Commerce Code, to reflect the changes promulgated in the UCC that provide essential rules for the new technologies and practices in payment systems, including payment by checks and other paper instruments. The bill also enacts non-uniform provisions with regard to demand drafts or remotely created items.

S.B. 1563 establishes uniform law on negotiable instruments and bank deposits and collections.

### **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**

S.B. 1563 amends Chapter 3 and 4, Business & Commerce Code, as follows:

The bill provides for use of electronic transactions by replacing the word "written record" or "writing" with the term "record" in such areas as (Chapter 3) - an unconditional promise or order; notice of right to defend action; lost, destroyed, or stolen cashier's check, teller's check, or certified check; discharge by cancellation or renunciation; (Chapter 4) - presentment by notice of item not payable by, through or at a bank, liability of drawer or indorser; deferred posting, recovery of payment by return of items, time of dishonor, return of items by payor bank; when items subject to notice, stop-payment order, legal process, or setoff, order in which items may be charged or certified.

The bill provides that a person who is liable to the issuer under the Federal Trade Commission (16 C.F.R. Part 433) but who is not a seller of the goods, has full recourse against the seller of the goods, with recourse being cumulative of any rights of equitable subrogation.

The bill provides that a party seeking to enforce a lost instrument need not have been in possession of the instrument at the time it was lost.

The bill provides that the term "demand drafts" - an item that is not signed by the bank's customer but was created by a third person under the purported authority of the customer for the purpose of charging the customer's bank account - are now termed "remotely created items" with respect to transfer and presentment warranties in both Chapters 3 and 4. The bill also prohibits liability for an intermediary bank in the item-processing chain of banks regarding an unauthorized remotely-created item.

The bill provides that guarantors of negotiable instruments and sureties of nonnegotiable instruments are subject to Chapter 3, which is applicable to the signing of accommodations and the discharge of indorsers and accommodation parties. This provision conforms to the modern view of suretyship contained in the Third Restatement of Suretyship and Guaranty.

The bill provides a processing fee with respect to the dishonor of an item, including instruments other than checks. It also is intended to provide for uniform authorization for a processing fee with respect to transactions under both loan chapter and credit sale chapters in Subtitle B, Title 4, Finance Code.

The bill provides that an obligor's payments to a transferor will be credited against an instrument if made before the obligor receives notice of the transfer.

The bill repeals Section 3.116(c) which provides that the discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under Subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

### **EFFECTIVE DATE**

September 1, 2005