

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 2320-01
BILL NO.: SB 604
SUBJECT: Business: Commercial Code
TYPE: Original
DATE: January 10, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	\$0	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	(Unknown)*

*** Does not reflect amount of loss of fees to the County Employees Retirement System, which are not considered local funds for fiscal note purposes.**

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Secretary of State's Office (SOS)** assume this proposal would result in an increased number of UCC filings with SOS. There would be a concurrent drop in the number of UCC filings made with the county governments.

"This proposal would largely eliminate the current "dual filing" system currently in place that calls for many, but not all, filings to be made at both the state and county level. Currently, certain filings for consumer goods, timber, minerals, oil, gas, etc. are filed at the county level only. This legislation would transfer these filings to the state level, thus increasing the state's workload. Unfortunately, there are no aggregate totals available from the counties that would indicate the total number of filings that would no longer be filed at the county level and instead filed with the SOS. Therefore, the fiscal impact of the anticipated increased filings is not ascertainable."

"By way of rough comparison, in FY99, the UCC Division handled a total of 96,385 filings. The UCC Division also fulfilled 25,815 requests for information from its files. It is not possible to predict how many additional new filings would be made with the SOS under the proposed legislation, but it is anticipated that there will be a significant increase in these FY99 figures under the proposed legislation. This will result in a concurrent increase in total state revenues."

"There will also be a negative impact as this legislation will fundamentally alter the manner in which the UCC Division does business, and as such many changes must occur. The most significant impact of the legislation is the change in technology the legislation contemplates. The proposed legislation envisions a system whereby private parties may make filings with the UCC Division electronically, and in turn access the UCC Division's database to conduct their own searches. For instance, all references to the use of paper for filings or search results have been replaced with the broader term "communicate" defined in Section 400.9-1029(a)(18) to mean, in part, "...transmit a record by any means..." Further, with regard to actual filings, Section 400.9-526 stipulates that the filing office (the UCC Division) may authorize the acceptable "method or medium of communication." Finally, Section 400.9-102(7) does away with any requirement for a tangible signature on a document. The upshot of these provisions is that this legislation contemplates the electronic filing of UCC statements."

"Given that the UCC Division currently employs a mainframe computer system, it is unlikely that mere programming changes to the existing system would be sufficient to implement all the objectives of the proposed legislation (including primarily the electronic filing of documents). Instead, new technology would likely have to be introduced into the Division. The proposed legislation contemplates this situation. Proposed Section 400.9-526 states that the technology employed by the UCC Division should be in harmony with the other states that adopt this legislation. Despite the effective date of this proposed legislation being 1/1/02 much work will

ASSUMPTION (continued)

have to be undertaken prior to that date in order to meet this deadline. Further, it is not possible to predict the final cost for implementing new technology into the UCC Division sufficient to accommodate the changes contemplated by the proposed legislation. It is possible that this project would have to be contracted to a private vendor through a public bid process."

"The following is a summary of those specific provisions that would directly impact the UCC Division. As already noted, it is unlikely these changes could be fully implemented in the current mainframe environment in which the UCC Division operates. Additionally, other provisions that are not directly related to technology issues are also discussed."

"Proposed Section 400.515 (b) calls for all financial statements related to transactions involving public financing and those involving manufactured homes to have a duration of thirty (30) years. Currently the SOS mainframe computer does not recognize this time period."

"Further, proposed Section 400.9-519(b) requires the computer system employed by the UCC Division include a digit that: "(1) Is mathematically derived from or related to the other digits of the file number, and (2) Enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error." The current mainframe application used by the UCC Division cannot accommodate this requirement."

"Further, Section 400.9-522 of the proposed legislation would require SOS to maintain a record of all filing for at least one year after that filing lapses. The current mainframe computer system is unable to accommodate this requirement."

"Further, Section 400.9-523(f) would require SOS to offer, at least weekly, to the public, copies of all records filed, "in every medium from time to time available to the filing office." It is uncertain what the quoted language would require. If it requires that an electronic version of the UCC database be made available, then this information could be made available with only certain modifications to the mainframe computer. If the language would require physical copies to be made of the actual paper filings, several additional FTE would be required in order to make necessary copies."

"Further, Section 400.9-518 would permit a debtor to file a correction to financing statements the debtor believes to be in error. This sort of filing is not currently available under the law and, hence is not available in the current mainframe system."

"Further, proposed Section 400.9-521 requires that the UCC Division accept any filing that appears in the format as set out in legislation. The format contemplates filing would be made on standard 8 ½" X 11" sized paper. The vast majority of filing historically made with the UCC Division were on 5" X 8" sized forms. Therefore, the filing cabinets used by the UCC Division

ASSUMPTION (continued)

were specifically designed to hold this smaller sized form. Adoptions of this larger form would therefore create a space issue, and might require reconfiguration of the UCC Division filing cabinets."

"Proposed section 400.9-525 set forth a new fee schedule to be used in calculating UCC filing fees with the SOS. The fees would be changed are: i) \$10 for initial public finance transaction or manufacturing home transaction, ii) \$10 for all other filings of 1 or 2 pages; iii) \$20 for all other filings of 3 or more pages; iv) \$5 if the filing is communicated in another medium besides written word, and v) \$10 for a request for information. Current fees associated with UCC filings are: i) \$11.00 for original financing statement; ii) \$9.00 for each standard-sized continuation statement, and \$11.00 for nonstandard-sized; iii) \$5.00 for each termination statement; iv) \$9.00 for each standard-sized assignment, and \$11.00 for each nonstandard-sized (plus \$1.00 per page for attachments); v) \$9.00 for each standard-sized statement of Release and \$11.00 for each non-standard-size; vi) \$13.00 for each certificate of Filing Information; and vii) \$13.00 for each Certificate of copy (plus 50 cents per page). Note: The current fees include a \$5.00 fee charged under Section 28.660 ("the Technology fund"). This fee charged under this section is scheduled to sunset on 12/31/2001, after which time all current fees will be reduced by \$5.00."

"Conversely, Total State Revenues could be adversely affected if the number of filings increases to significantly that additional FTE (and associated E&E) are required to handle the increased volume. As it is unknown how many filings are currently made at the local level would be made with SOS under the proposed legislation, the potential number of additional FTE is impossible to predict. Further, proposed Section 400.9-519(h) requires SOS to process all filing within two (2) business days after receipt. While the UCC Division strives to turn around filings in an expeditious manner, it is not always possible to do so within two (2) working days. In order to fully comply with this new statutory mandate, additional FTE would be required. It is not possible to predict the total number of FTE that would be required due to this requirement, though, without knowing the number of increased filing that would be filed with the SOS as opposed to the various counties."

"Further, proposed Section 400.9-526 requires the SOS to adopt and publish rules to implement the legislation. Section 400.9-526(b) requires such rules to be in harmony with the rules of other states. Further, the rules must be such that not only the practices and technologies of other jurisdiction. There will be significant time and expense involved in developing such rules, and it is not possible to predict the total number of pages that would be published. The cost for publishing rules in the Missouri Code is \$26.50 per page, and \$22.50 per page in the Missouri Register. Further, to the extent the technology of this office is required to be compatible with the technology of other jurisdictions, significant expense may be incurred. It is not possible to predict the potential cost of such expense."

ASSUMPTION (continued)

"Further, Section 400.9-527 of the proposed legislation requires SOS to report annually to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House on the operation of the UCC Division. The report would include a statement comparing Missouri rules to the rules of other filing offices in other jurisdictions that have enacted all or substantially all of this act, along with reasons for variations and also report on any rules not in harmony with the most recent revision of the Model Rules promulgated by the International Association of Corporate Administrators. Preparation of this report would require significant legal resources if in fact it is contemplated that the laws of all 50 states must be researched and compared to Missouri's law. Current SOS legal staff would not be able to undertake this sort of comprehensive analysis of the laws of all 50 states. It is anticipated that additional legal FTE (and associated E&E) would therefore be required to produce this report."

Oversight notes that filings under the Uniform Commercial Code are not required to be recorded, however, the option to record filings is offered, and in many instances the filings are recorded. Because filings are not required to be recorded no loss of income to the Missouri Housing Trust Fund or the Preservation of Land Survey Monuments within the Department of Natural Resources will be shown in this fiscal note.

Oversight notes that if UCC filings are moved from the local level to the state level that there would be administrative impact in processing filings in the Recorders office, however, for purposes of this fiscal note savings due to the decrease in filings will not be shown because this proposal requires the Recorders to maintain their filing system for fixture filings.

Department of Economic Development - Missouri Housing Development Commission officials assumes no fiscal impact.

Department of Natual Resources officials assume that this proposal would increase the state's costs of filing UCC statements from \$11 to \$20 which would result in an annual impact of \$270. DNR officials assume this cost could be absorbed with current appropriation.

Boone County Recorder of Deeds stated that Missouri is currently a dual filing state under provisions of Article 9 of the Uniform Commercial Code. This proposal would create a centralized system that would result in a loss of revenues to the counties.

Boone County officials estimate the loss of revenue to their county's General Revenue Fund to be between \$20,000 to \$25,000 annually.

Boone County officials stated that even though most of the filings would be moved to a centralized system the counties would realize the cost of maintaining their filing system for fixture filings. Officials also stated that on each UCC filing in the counties, a fee is collected that

ASSUMPTION (continued)

This proposal would affect all businesses, including small businesses, that engage in transactions subject to the Uniform Commercial Code. The proposal would, in certain instances, lessen the paperwork necessary to document a transaction subject to the UCC as perfection of those transactions would be made with only one UCC filing at the state level as opposed to dual filing at both the state and county level.

DESCRIPTION

This act substantially revises Article 9 of the Uniform Commercial Code regulating secured transactions. The scope of Article 9 is expanded to include additional types of property in which a security interest can be taken by a creditor and additional kinds of collateral, including sales of payment intangibles and promissory notes, security interests created by governmental debtors, health insurance receivables, consignments, and commercial tort claims.

The act clarifies that filing a financing statement perfects a security interest, even if another method of perfection exists. Current law authorizes control, in which the debtor cannot transfer the property without the creditor's consent, as the method of perfection for only investment property. The act also allows control as a method of perfection for letter of credit rights and deposit accounts. Automatic perfection for a purchase money security interest is increased from the current ten days to twenty days. Attachment of a purchase money security interest is perfection for the duration of the twenty-day period, then another method of perfection is necessary to continue the perfected security interest. A purchase money security interest in consumer goods, however, remains perfected automatically for the duration of the security interest.

Current law establishes a basic choice of law rule, as to which state's law governs perfection, its effect, and a creditor's priority, of the state in which the collateral is found. The act chooses the state that is the location of the debtor. If the debtor is an entity created by state registration, the location of the debtor is the location in which the entity is created by registration. If the entity is a corporation, the location of the debtor is the state in which the corporate charter is filed or registered.

The act allows the transition from paper filing to electronic filing. The only local filing of financing statements occurs in the real estate records for fixtures; all other filings are centralized with the Secretary of State's office.

The act changes certain aspects of enforcing a security interest that is included in a consumer transaction: a consumer cannot waive redemption rights in financing agreement; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her; a consumer
DESCRIPTION (continued)

buyer of goods who pre-pays in whole or in part has an enforceable interest in the purchased goods and may obtain the goods as a remedy; and a secured creditor cannot accept collateral as

L.R. NO. 2320-01
BILL NO. SB 604
PAGE 8 OF 8
January 10, 2000

partial satisfaction of a consumer obligation.

The act also provides new rules for guarantors, for the interests of subordinate creditors with security interests in the same property, and for aspects of enforcement when the debtor is a consumer debtor.

The repeal of the existing Article 9 provisions and the enactment of the new provisions take effect July 1, 2002.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Secretary of State
Department of Economic Development - Missouri Housing Development Commission
Department of Natural Resources
Boone County Recorder of Deeds
County Employees' Retirement Fund



Jeanne Jarrett, CPA
Director
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