

Date of Hearing: April 16, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2667 (Banking & Finance) – As Introduced: March 5, 2012

SUBJECT: Personal property: fraudulent transfers.

SUMMARY: Allows a transferor to file a financing statement, authorized in an authenticated record, with respect to the property transferred.

EXISTING LAW

- 1) Provides that a transfer of personal property not accompanied by delivery and change of possession is void against the transferor's creditors. [Civil Code, Section 3440]
- 2) Exempts certain types of transfers from the general rule, Civil Code 3440. One such exempted transfer, under subdivision (h) of Section 3440.1 of the Civil Code, is where a transferor or transferee files a financing statement with the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code and publishes notice of the intended transfer at least 10 days before the date the transfer occurs. [Civil Code, Section 3440.1]
- 3) Requires the transferor to sign the financing statement. [Civil Code, Section 3440.1]
- 4) Defines "authenticate" as either of the following: To sign or to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record. [Commercial Code, Section 9102]
- 5) Defines "record" except as used in "for record", "record or legal title" and "record owner" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form. [Commercial Code, Section 9102]

FISCAL EFFECT: None.

COMMENTS:

AB 2667, sponsored by the UCC Committee of the California State Bar, amends subdivision (h) of Section 3440.1 of the Civil Code to eliminate the requirement that a financing statement be signed by the transferor, and instead require that the transferor authorize the filing in an "authenticated record."

This technical change is necessary to conform Section 3440.1(h) of the Civil Code to Division 9 of the Commercial Code, which eliminated, under the 2001 amendments, the requirement that a financing statement be signed. Under Sections 9502(a) and 9509(a) of the Commercial Code, records filed with the office of the Secretary of State do not require signatures for their effectiveness. Instead, a person is entitled to file a financing statement if the debtor "authorizes the filing in an authenticated record."

The UCC Committee of the California State Bar noted, "in Official Comment 3 to Section 9-502 of the UCC, "[t]he elimination of the signature requirement facilitates paperless filing." As a result of this change to the UCC, the form of National UCC Financing Statement (Form UCC1), available on the California Secretary of State website was revised so there is no longer a signature line for the debtor. Since the UCC financing statement form no longer provides a signature line for the debtor/transferee, parties need to manually add a signature block for the transferee to comply with Civil Code Section 3440.1(h)(1)."

This proposal would simply amend Civil Code Section 3440.1(h) (1) to track Division 9 of the Commercial Code so that the transferee or transferee could file a financing statement with the California Secretary of State without a physical signature, as long as the transferee authorized the filing in an authenticated record.

REGISTERED SUPPORT / OPPOSITION:

Support

The State Bar of California (Sponsor)

Opposition

None on file.

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