

House of Representatives, March 30, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE CONCERNING INVESTMENT SECURITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42a-8-108 of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 [A security interest in an uncertificated
5 security may be evidenced by the registration of
6 pledge to the secured party or a person designated
7 by him. There can be no more than one registered
8 pledge of an uncertificated security at any time.
9 The registered owner of an uncertificated security
10 is the person in whose name the security is
11 registered, even if the security is subject to a
12 registered pledge. The rights of a registered
13 pledgee of an uncertificated security under this
14 article are terminated by the registration of
15 release.]

16 (a) A PERSON WHO TRANSFERS A CERTIFICATED
17 SECURITY TO A PURCHASER FOR VALUE WARRANTS TO THE
18 PURCHASER, AND AN ENDORSER, IF THE TRANSFER IS BY
19 ENDORSEMENT, WARRANTS TO ANY SUBSEQUENT PURCHASER,
20 THAT:

21 (1) THE CERTIFICATE IS GENUINE AND HAS NOT
22 BEEN MATERIALLY ALTERED;

23 (2) THE TRANSFEROR OR ENDORSER DOES NOT KNOW
24 OF ANY FACT THAT MIGHT IMPAIR THE VALIDITY OF THE
25 SECURITY;

26 (3) THERE IS NO ADVERSE CLAIM TO THE
27 SECURITY;

28 (4) THE TRANSFER DOES NOT VIOLATE ANY
29 RESTRICTION ON TRANSFER;

30 (5) IF THE TRANSFER IS BY ENDORSEMENT, THE
31 ENDORSEMENT IS MADE BY AN APPROPRIATE PERSON, OR
32 IF THE ENDORSEMENT IS BY AN AGENT, THE AGENT HAS
33 ACTUAL AUTHORITY TO ACT ON BEHALF OF THE
34 APPROPRIATE PERSON; AND

35 (6) THE TRANSFER IS OTHERWISE EFFECTIVE AND
36 RIGHTFUL.

37 (b) A PERSON WHO ORIGINATES AN INSTRUCTION
38 FOR REGISTRATION OF TRANSFER OF AN UNCERTIFICATED
39 SECURITY TO A PURCHASER FOR VALUE WARRANTS TO THE
40 PURCHASER THAT:

41 (1) THE INSTRUCTION IS MADE BY AN APPROPRIATE
42 PERSON, OR IF THE INSTRUCTION IS BY AN AGENT, THE
43 AGENT HAS ACTUAL AUTHORITY TO ACT ON BEHALF OF THE
44 APPROPRIATE PERSON;

45 (2) THE SECURITY IS VALID;

46 (3) THERE IS NO ADVERSE CLAIM TO THE
47 SECURITY; AND

48 (4) AT THE TIME THE INSTRUCTION IS PRESENTED
49 TO THE ISSUER:

50 (i) THE PURCHASER WILL BE ENTITLED TO THE
51 REGISTRATION OF TRANSFER;

52 (ii) THE TRANSFER WILL BE REGISTERED BY THE
53 ISSUER FREE FROM ALL LIENS, SECURITY INTERESTS,
54 RESTRICTIONS AND CLAIMS OTHER THAN THOSE SPECIFIED
55 IN THE INSTRUCTION;

56 (iii) THE TRANSFER WILL NOT VIOLATE ANY
57 RESTRICTION ON TRANSFER; AND

58 (iv) THE REQUESTED TRANSFER WILL OTHERWISE BE
59 EFFECTIVE AND RIGHTFUL.

60 (c) A PERSON WHO TRANSFERS AN UNCERTIFICATED
61 SECURITY TO A PURCHASER FOR VALUE AND DOES NOT
62 ORIGINATE AN INSTRUCTION IN CONNECTION WITH THE
63 TRANSFER WARRANTS THAT:

64 (1) THE UNCERTIFICATED SECURITY IS VALID;

65 (2) THERE IS NO ADVERSE CLAIM TO THE
66 SECURITY;

67 (3) THE TRANSFER DOES NOT VIOLATE ANY
68 RESTRICTION ON TRANSFER; AND

69 (4) THE TRANSFER IS OTHERWISE EFFECTIVE AND
70 RIGHTFUL.

71 (d) A PERSON WHO ENDORSES A SECURITY
72 CERTIFICATE WARRANTS TO THE ISSUER THAT:

73 (1) THERE IS NO ADVERSE CLAIM TO THE
74 SECURITY; AND

75 (2) THE ENDORSEMENT IS EFFECTIVE.

76 (e) A PERSON WHO ORIGINATES AN INSTRUCTION
77 FOR REGISTRATION OF TRANSFER OF AN UNCERTIFICATED
78 SECURITY WARRANTS TO THE ISSUER THAT:

79 (1) THE INSTRUCTION IS EFFECTIVE; AND

80 (2) AT THE TIME THE INSTRUCTION IS PRESENTED
81 TO THE ISSUER THE PURCHASER WILL BE ENTITLED TO
82 THE REGISTRATION OF TRANSFER.

83 (f) A PERSON WHO PRESENTS A CERTIFICATED
84 SECURITY FOR REGISTRATION OF TRANSFER OR FOR
85 PAYMENT OR EXCHANGE WARRANTS TO THE ISSUER THAT
86 THE PERSON IS ENTITLED TO THE REGISTRATION,
87 PAYMENT OR EXCHANGE, BUT A PURCHASER FOR VALUE AND
88 WITHOUT NOTICE OF ADVERSE CLAIMS TO WHOM TRANSFER
89 IS REGISTERED WARRANTS ONLY THAT THE PERSON HAS NO
90 KNOWLEDGE OF ANY UNAUTHORIZED SIGNATURE IN A
91 NECESSARY ENDORSEMENT.

92 (g) IF A PERSON ACTS AS AGENT OF ANOTHER IN
93 DELIVERING A CERTIFICATED SECURITY TO A PURCHASER,
94 THE IDENTITY OF THE PRINCIPAL WAS KNOWN TO THE
95 PERSON TO WHOM THE CERTIFICATE WAS DELIVERED, AND
96 THE CERTIFICATE DELIVERED BY THE AGENT WAS
97 RECEIVED BY THE AGENT FROM THE PRINCIPAL OR
98 RECEIVED BY THE AGENT FROM ANOTHER PERSON AT THE
99 DIRECTION OF THE PRINCIPAL, THE PERSON DELIVERING
100 THE SECURITY CERTIFICATE WARRANTS ONLY THAT THE
101 DELIVERING PERSON HAS AUTHORITY TO ACT FOR THE
102 PRINCIPAL AND DOES NOT KNOW OF ANY ADVERSE CLAIM
103 TO THE CERTIFICATED SECURITY.

104 (h) A SECURED PARTY WHO REDELIVERS A SECURITY
105 CERTIFICATE RECEIVED, OR AFTER PAYMENT AND ON
106 ORDER OF THE DEBTOR DELIVERS THE SECURITY
107 CERTIFICATE TO ANOTHER PERSON, MAKES ONLY THE
108 WARRANTIES OF AN AGENT UNDER SUBSECTION (g) OF
109 THIS SECTION.

110 (i) EXCEPT AS OTHERWISE PROVIDED IN
111 SUBSECTION (g) OF THIS SECTION, A BROKER ACTING
112 FOR A CUSTOMER MAKES TO THE ISSUER AND TO A
113 PURCHASER THE WARRANTIES PROVIDED IN SUBSECTIONS
114 (a) TO (f), INCLUSIVE, OF THIS SECTION. A BROKER
115 THAT DELIVERS A SECURITY CERTIFICATE TO ITS
116 CUSTOMER, OR CAUSES ITS CUSTOMER TO BE REGISTERED
117 AS THE OWNER OF AN UNCERTIFICATED SECURITY, MAKES
118 TO THE CUSTOMER THE WARRANTIES PROVIDED IN

119 SUBSECTION (a) OR (b) OF THIS SECTION, AND HAS THE
120 RIGHTS AND PRIVILEGES OF A PURCHASER UNDER THIS
121 SECTION. THE WARRANTIES OF AND IN FAVOR OF THE
122 BROKER ACTING AS AN AGENT ARE IN ADDITION TO
123 APPLICABLE WARRANTIES GIVEN BY AND IN FAVOR OF THE
124 CUSTOMER.

125 Sec. 2. Section 9 of public act 97-182 is
126 repealed and the following is substituted in lieu
127 thereof:

128 (a) A person who originates an entitlement
129 order to a securities intermediary warrants to the
130 securities intermediary that:

131 (1) The entitlement order is made by an
132 appropriate person, or if the entitlement order is
133 by an agent, the agent has actual authority to act
134 on behalf of the appropriate person; and

135 (2) There is no adverse claim to the security
136 entitlement.

137 (b) A person who delivers a security
138 certificate to a securities intermediary for
139 credit to a securities account or originates an
140 instruction with respect to an uncertificated
141 security directing that the uncertificated
142 security be credited to a securities account makes
143 to the securities intermediary the warranties
144 specified in [section 42a-8-108(a) or
145 42a-8-108(b)] SUBSECTION (a) OR (b) OF SECTION
146 42a-8-108 of the general statutes, AS AMENDED BY
147 SECTION 1 OF THIS ACT.

148 (c) If a securities intermediary delivers a
149 security certificate to its entitlement holder or
150 causes its entitlement holder to be registered as
151 the owner of an uncertificated security, the
152 securities intermediary makes to the entitlement
153 holder the warranties specified in section
154 [42a-8-108(a) or 42a-8-108(b)] SUBSECTION (a) OR
155 (b) OF SECTION 42a-8-108 of the general statutes,
156 AS AMENDED BY SECTION 1 OF THIS ACT.

157 Sec. 3. Subsection (a) of section 10 of
158 public act 97-182 is repealed and the following is
159 substituted in lieu thereof:

160 (a) The local law of the issuer's
161 jurisdiction, as specified in subsection (d) of
162 this section, governs:

163 (1) The validity of a security;

164 (2) The rights and duties of the issuer with
165 respect to registration of transfer;

166 (3) The effectiveness of registration of
167 transfer by the issuer;

168 (4) Whether the issuer owes any duties to an
169 adverse claimant to a security; and

170 (5) Whether an adverse claim can be asserted
171 against a person to whom transfer of a
172 certificated or uncertificated security is
173 registered or A person who obtains control of an
174 uncertificated security.

175 Sec. 4. Subsection (e) of section 10 of
176 public act 97-182 is repealed and the following is
177 substituted in lieu thereof:

178 (e) The following rules determine a
179 "securities intermediary's jurisdiction" for
180 purposes of this section:

181 (1) If an agreement between the securities
182 intermediary and its entitlement holder specifies
183 that it is governed by the law of a particular
184 jurisdiction, that jurisdiction is the securities
185 intermediary's jurisdiction.

186 (2) If an agreement between the securities
187 intermediary and its entitlement holder does not
188 specify the governing law as provided in
189 subdivision (1) of this subsection, but expressly
190 specifies that the securities account is
191 maintained at an office in a particular
192 jurisdiction, that jurisdiction is the securities
193 intermediary's jurisdiction.

194 (3) If an agreement between the securities
195 intermediary and its entitlement holder does not
196 specify a jurisdiction as provided in subdivision
197 (1) or (2) of this subsection, the securities
198 intermediary's jurisdiction is the jurisdiction in
199 which IS located the office identified in an
200 account statement as the office serving the
201 entitlement holder's account.

202 (4) If an agreement between the securities
203 intermediary and its entitlement holder does not
204 specify a jurisdiction as provided in subdivision
205 (1) or (2) of this subsection and an account
206 statement does not identify an office serving the
207 entitlement holder's account as provided in
208 subdivision (3) of this subsection, the securities
209 intermediary's jurisdiction is the jurisdiction in
210 which is located the chief executive office of the
211 securities intermediary.

212 Sec. 5. Subsection (f) of section 42a-8-304
213 of the general statutes, as amended by section 30

214 of public act 97-182, is repealed and the
215 following is substituted in lieu thereof:

216 (f) Unless otherwise agreed, a person making
217 an endorsement assumes only the obligations
218 provided in section [8 of this act] 42a-8-108, AS
219 AMENDED BY SECTION 1 OF THIS ACT, and not an
220 obligation that the security will be honored by
221 the issuer.

222 Sec. 6. Subsection (b) of section 42a-8-305
223 of the general statutes, as amended by section 31
224 of public act 97-182, is repealed and the
225 following is substituted in lieu thereof:

226 (b) Unless otherwise agreed, a person
227 initiating an instruction assumes only the
228 obligations imposed by section [8 of this act]
229 42a-8-108, AS AMENDED BY SECTION 1 OF THIS ACT,
230 and not an obligation that the security will be
231 honored by the issuer.

232 Sec. 7. Subsection (a) of section 42a-8-401
233 of the general statutes, as amended by section 34
234 of public act 97-182, is repealed and the
235 following is substituted in lieu thereof:

236 (a) If a certificated security in registered
237 form is presented to an issuer with a request to
238 register transfer or an instruction is presented
239 to an issuer with a request to register transfer
240 of an uncertificated security, the issuer shall
241 register the transfer as requested if:

242 (1) Under the terms of the security the
243 person seeking registration of transfer is
244 eligible to have the security registered in its
245 name;

246 (2) The endorsement or instruction is made by
247 the appropriate person or by an agent who has
248 actual authority to act on behalf of the
249 appropriate person;

250 (3) Reasonable assurance is given AS PROVIDED
251 IN SECTION 42a-8-402 that the endorsement or
252 instruction is genuine and authorized; [(section
253 42a-8-402);]

254 (4) Any applicable law relating to the
255 collection of taxes has been complied with;

256 (5) The transfer does not violate any
257 restriction on transfer imposed by the issuer in
258 accordance with section 42a-8-204;

259 (6) A demand that the issuer not register
260 transfer has not become effective under section
261 42a-8-403, AS AMENDED BY SECTION 8 OF THIS ACT, or

262 the issuer has complied with subsection (b) of
263 section 42a-8-403, AS AMENDED BY SECTION 8 OF THIS
264 ACT, but no legal process or indemnity bond is
265 obtained as provided in subsection (d) of section
266 42a-8-403, AS AMENDED BY SECTION 8 OF THIS ACT;
267 and

268 (7) The transfer is in fact rightful or is to
269 a protected purchaser.

270 Sec. 8. Subsection (b) of section 42a-8-403
271 of the general statutes, as amended by section 36
272 of public act 97-182, is repealed and the
273 following is substituted in lieu thereof:

274 (b) If a certificated security in registered
275 form is presented to an issuer with a request to
276 register transfer or an instruction is presented
277 to an issuer with a request to register transfer
278 of an uncertificated security after a demand that
279 the issuer not register a transfer has become
280 effective, the issuer shall promptly communicate
281 to the person who initiated the demand at the
282 address provided in the demand and the person who
283 presented the security for registration of
284 transfer or initiated the instruction requesting
285 registration of transfer a notification stating
286 that:

287 (1) The certificated security has been
288 presented for registration of transfer or the
289 instruction for registration of transfer of the
290 uncertificated security has been received;

291 (2) A demand that the issuer not register
292 transfer had previously been received; and

293 (3) The issuer will withhold registration of
294 transfer for a period of time stated in the
295 notification in order to provide the person who
296 initiated the demand an opportunity to obtain
297 legal process or an indemnity bond.

298 Sec. 9. Subsection (a) of section 43 of
299 public act 97-182 is repealed and the following is
300 substituted in lieu thereof:

301 (a) To the extent necessary for a securities
302 intermediary to satisfy all security by
303 entitlements with respect to a particular
304 financial asset, all interests in that financial
305 asset held by the securities intermediary are held
306 by the securities intermediary for the entitlement
307 holders, are not property of the securities
308 intermediary [,] and are not subject to claims of
309 creditors of the securities intermediary, EXCEPT

310 AS OTHERWISE PROVIDED IN SECTION 51 OF PUBLIC ACT
311 97-182, AS AMENDED BY SECTION 12 OF THIS ACT.

312 Sec. 10. Subsection (e) of section 43 of
313 public act 97-182 is repealed and the following is
314 substituted in lieu thereof:

315 (e) An action based on the entitlement
316 holder's property interest with respect to a
317 particular financial asset under subsection (a) of
318 this section, whether framed in conversion,
319 replevin, constructive trust, equitable lien or
320 other theory, may not be asserted against any
321 [buyer] PURCHASER of a financial asset or interest
322 therein who gives value, OBTAINS CONTROL and does
323 not act in collusion with the securities
324 intermediary in violating the securities
325 intermediary's obligations under section 44 of
326 [this act] PUBLIC ACT 97-182.

327 Sec. 11. Subsection (a) of section 50 of
328 public act 97-182 is repealed and the following is
329 substituted in lieu thereof:

330 (a) An action based on an adverse claim to a
331 financial asset or security entitlement, whether
332 framed in conversion, replevin, constructive
333 trust, equitable lien or other theory, may not be
334 asserted against a person who [buys] PURCHASES a
335 security entitlement, or an interest therein, from
336 an entitlement holder if the purchaser gives
337 value, does not have notice of the adverse claim
338 [,] and obtains control.

339 Sec. 12. Section 51 of public act 97-182 is
340 repealed and the following is substituted in lieu
341 thereof:

342 (a) Except as otherwise provided in
343 [subsection] SUBSECTIONS (b) AND (c) of this
344 section, if a securities intermediary does not
345 have sufficient interests in a particular
346 financial asset to satisfy both its obligations to
347 entitlement holders who have security entitlements
348 to that financial asset and its obligation to a
349 creditor of the securities intermediary who has a
350 security interest in that financial asset, the
351 claims of entitlement holders, other than the
352 creditor, have priority over the claim of the
353 creditor.

354 (b) A CLAIM OF A CREDITOR OF A SECURITIES
355 INTERMEDIARY WHO HAS A SECURITY INTEREST IN A
356 FINANCIAL ASSET HELD BY A SECURITIES INTERMEDIARY
357 HAS PRIORITY OVER CLAIMS OF THE SECURITIES

358 INTERMEDIARY'S ENTITLEMENT HOLDERS WHO HAVE
359 SECURITY ENTITLEMENTS WITH RESPECT TO THAT
360 FINANCIAL ASSET IF THE CREDITOR HAS CONTROL OVER
361 THE FINANCIAL ASSET.

362 [(b)] (c) If a clearing corporation does not
363 have sufficient financial assets to satisfy both
364 its obligations to entitlement holders who have
365 security entitlements with respect to a financial
366 asset and its obligation to a creditor of the
367 clearing corporation who has a security interest
368 in that financial asset, the claim of the creditor
369 has priority over the claims of entitlement
370 holders.

371 Sec. 13. Subsection (1) of section 55 of
372 public act 97-182 is repealed and the following is
373 substituted in lieu thereof:

374 (1) In article 9:

375 (a) "Commodity account" means an account
376 maintained by a commodity intermediary in which a
377 commodity contract is carried for a commodity
378 customer.

379 (b) "Commodity contract" means a commodity
380 futures contract, an option on a commodity futures
381 contract, a commodity option, or other contract
382 that, in each case, is: (i) Traded on or subject
383 to the rules of a board of trade that has been
384 designated as a contract market for such a
385 contract pursuant to the federal commodities laws;
386 or (ii) traded on a foreign commodity board of
387 trade, exchange or market, and is carried on the
388 books of a commodity intermediary for a commodity
389 customer.

390 (c) "Commodity customer" means a person for
391 whom a commodity intermediary carries a commodity
392 contract on its books.

393 (d) "Commodity intermediary" means: (i) A
394 person who is registered as a futures commission
395 merchant under the federal commodities laws; or
396 (ii) a person who in the ordinary course of his
397 business provides clearance or settlement services
398 for a board of trade that has been designated as a
399 contract market pursuant to the federal
400 commodities laws.

401 (e) "Control" with respect to a certificated
402 security, uncertificated security or security
403 entitlement has the meaning specified in section
404 42a-8-106 of the general statutes, as amended by
405 section 6 of [this act] PUBLIC ACT 97-182. A

406 secured party has control over a commodity
407 contract if by agreement among the commodity
408 customer, the commodity intermediary and the
409 secured party, the commodity intermediary has
410 agreed that it will apply any value distributed on
411 account of the commodity contract as directed by
412 the secured party without further consent by the
413 commodity customer. If a commodity customer grants
414 a security interest in a commodity contract to its
415 own commodity intermediary, the commodity
416 intermediary as secured party has control. A
417 secured party has control over a securities
418 account or commodity account if the secured party
419 has control over all security entitlements or
420 commodity contracts carried in the securities
421 account or commodity account.

422 (f) "Investment property" means: (i) A
423 security, whether certificated or uncertificated;
424 (ii) a security entitlement; (iii) A SECURITIES
425 ACCOUNT; (iv) a commodity contract; or [(iv)] (v)
426 a commodity account.

427 Sec. 14. Section 8 of public act 97-182 is
428 repealed.

429 Sec. 15. This act shall take effect from its
430 passage.

431 JUD COMMITTEE VOTE: YEA 35 NAY 0 JF

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER HB 5469

STATE IMPACT	None
MUNICIPAL IMPACT	None
STATE AGENCY(S)	None

* * * * *

OLR BILL ANALYSIS

HB 5469

AN ACT CONCERNING ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE CONCERNING INVESTMENT SECURITIES

SUMMARY: This bill makes several technical and a few substantive changes to PA 97-182, which replaced Article 8 of the Uniform Commercial Code on transfers of investment securities with a Uniform Law Commissioners revision.

Under current law, entitlement holders' claims have priority over creditors' claims with respect to a security entitlement when a securities broker or other intermediary fails, leaving an insufficient amount of financial assets to satisfy the claims of its entitlement holders and creditors. The bill gives a creditor of a securities intermediary who has a security interest in a financial asset held by the intermediary priority over claims of entitlement holders if the creditor controls the financial asset.

The bill specifies that a securities account is included in the category of investment property. By law, investment property includes securities, security

entitlements, commodity contracts, or commodity accounts. By specifying that a securities account is included in this category, the bill applies the same rules regarding the perfection of a security interest to securities accounts as currently apply to other types investment property.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

Securities Accounts

By law a securities account is an account to which a security or other financial asset is or may be credited pursuant to an agreement. The person maintaining the account must treat the person for whom it is maintained as entitled to exercise whatever rights that accompany that financial asset.

By specifying that a securities account is investment property, the bill allows a security interest in such an account to be perfected by (1) filing an Article 9 security statement (with the secretary of the state) or (2) taking "control" of it. But if the debtor is a broker or securities or commodity intermediary, a security interest is perfected when it attaches, and the filing of a security statement has no effect for purposes of perfection or establishing priority over other creditors. "Control" includes taking possession of a certificate in the case of certificated securities and being registered on the issuer's books as a transferee in the case of uncertificated securities. Control can be taken over securities and commodities accounts by an agreement between the account holders, intermediaries, and creditors that allows the creditors to instruct the intermediaries on transfers without the account holders' consent.

BACKGROUND

Uniform Law Commissioner's Revisions to Article Eight

PA 97-182, which took effect October 1, 1997, replaced Article 8 of the Uniform Commercial Code (UCC) on transfers of investment securities, with a Uniform Law Commissioner's revision. It also added several new provisions to Article 9 on secured transactions

concerning the use of securities as collateral for loans. The principal changes were to (1) address the holding and transfer of securities by intermediaries, such as brokers, and (2) establish ways for creditors to perfect a security interest in securities held by intermediaries.

The act addressed the rights and duties of people and entities who issue, own, or transfer securities that are indirectly held through intermediaries, such as broker-dealers or banks acting as securities custodians.

Control

"Control" was a new concept added by PA 97-182. It means the secured party has taken necessary steps to ensure that the investment property can be sold without further action by the debtor without the secured party's consent. For securities held directly by the debtor in certificated form, a creditor can obtain control by getting the actual certificate. For securities held through an intermediary, the creditor can obtain control by having the securities transferred to an account in his name on the intermediary's books. Alternatively, he can enter into an agreement with the debtor and the intermediary, whereby the intermediary agrees to act on the creditor's instructions to sell or transfer the investment assets.

Security Entitlements

PA 97-182 defines "security entitlement" as the rights and property interest of an entitlement holder with respect to a financial asset. A person acquires a security entitlement when the securities intermediary credits the financial asset to a "securities account". Securities accounts may be established pursuant to an agreement in which the intermediary undertakes to treat the investor as someone who is entitled to exercise the rights that comprise the financial asset.

The act specifies that to the extent necessary to satisfy the claims of all the intermediary's customers, financial assets are held by the intermediary for the entitlement holders, are not the intermediary's property, and are not subject to claims of the intermediary's general creditors. This property

interest is one held in common by all entitlement holders who have entitlements to a particular security or other financial asset, regardless of when a particular holder acquired his rights.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 35 Nay 0