

An Act

To implement the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as “Independent Guarantees and Standby Letters of Credit Convention Implementation Act of 20__.”

Section 2. Findings and Purpose.

(a) Findings

- (1) Commercial finance assurances, such as letters of credit, standby letters of credit, and bank and financial institution guarantees, are integral to commerce and trade;
- (2) Laws that promote predictable payment increase the value of such assurances, support responsible domestic and international commercial practice and reduce systemic risk and enhance safety and soundness of bank and other financial institution practices;
- (3) The United Nations Convention on Independent Guarantees and Standby Letters of Credit (“Convention”) achieves these objectives;
- (4) Because the independence principles embodied in the Convention are already embodied in the text of the Official Version of Uniform Commercial Code implementation of the Convention introduces only minor changes to uniform state law in the United States. Article 5 of the UCC, entitled “Letters of Credit,” codifies the law of commercial and standby letters of credit, including undertakings known outside the United States as independent guarantees.
- (5) Federal and State law bodies in the United States as well as banking and import-export interests were leaders in the development of the Convention.

(b) Purpose.

The purpose of this Act is to implement the Convention in the United States. This Act does that by giving full effect to the choice of law provisions of the Convention and of Article 5 of the UCC.

Section 3. Definitions. In this Act,

(a) “Convention” means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

(b) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United

States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(c) "UCC" or "Uniform Commercial Code," means the Official Text of the Uniform Commercial Code, prepared and published by American Law Institute and the Uniform Law Commission.

Section 4. Scope. This Act applies only to an international independent undertaking that is within the scope of the Convention and to which the Convention applies ("undertaking").

Section 5. Implementation of the Convention in the United States

(a) ~~(a)~~ **Undertakings that Choose the Convention as Applicable Law.** An undertaking that expressly states that it is governed by the ~~text of the~~ Convention shall be governed by the text of the Convention as the applicable law.

Alternative A

(b) <Undertakings that Choose the Law of a Foreign Jurisdiction as the Applicable Law. An undertaking that expressly states that it is governed by the law of a foreign jurisdiction shall be governed by the law of that jurisdiction, including the Convention as there implemented.>

(c) ~~(b)~~ **Undertakings that do not Choose Applicable Law.** ~~The liability of an issuer, nominated person, or adviser for action or omission under an~~ < An undertaking that does not ~~expressly state its governing~~ <choose applicable law is governed by the law as directed by Section 5-116<(b)> of the UCC. When the governing law ~~chosen under the immediately preceding sentence~~ <so directed is the law of a State, Article 5 of the UCC ~~[-, excluding its choice of law rules,]~~ is that law < except that (i) Article 12(c) of the Convention, and not Section 5-106(c) or (d) of the UCC, shall govern the duration of the undertaking and (ii) Article 18 of the Convention shall govern the issuer's right of setoff. <When the law so directed is the law of a foreign jurisdiction, the Convention as implemented in that jurisdiction is that law.> Except as otherwise stated in this Section 5, Article 5 of the UCC is the law that implements the Convention in the United States.

Alternative B

~~(b) Undertakings that do not Choose Applicable Law. The liability of an issuer, nominated person, or adviser for action or omission under an undertaking that does not expressly state its governing law is governed by the law as directed by Section 5-116 of the UCC. When the governing law chosen under the immediately preceding sentence is the law of a State, Article 5 of the UCC, as adopted in that State [and excluding its choice of law rules], is that law except that (i) Article 12(c) of the Convention and not Section 5-106(e) or (d) of the UCC shall govern the duration of the undertaking, (ii) Article 18 of the Convention shall govern the issuer's right of setoff, (iii) if Article 5 of the UCC, with or without non-uniform provisions, is not in effect in the State, Article 5 of UCC shall govern, and (iv) if Article 5 of the UCC is in effect in the State, but a non-uniform provision of the State's Article 5 of the UCC would produce a different outcome than the comparable provision in the Official~~

~~Text of Article 5 of the UCC would produce, the provision in the Official Text of Article 5 of the UCC shall govern. Except as otherwise stated in this Section 5, Article 5 of the UCC is the law that implements the Convention in the United States.~~

~~Section 6. Undertakings that Choose the Law of the United States as the Applicable Law.~~

~~Undertakings that choose the law of the United States without reference to the law of a particular State shall be governed by Article 5 of the UCC, except that (i) Article 12(c) of the Convention, and not Section 5-106(e) or (d) of the UCC, shall govern the duration of the undertaking, and (ii) Article 18 of the Convention shall govern the issuer's right of setoff.~~**Section 7. Undertakings that Choose State Law as the Applicable Law.** An undertaking that expressly states that it is governed by the law of a State shall be governed by the law of that State and not by the Convention.

Section 8.<7.> Effective Date and Preservation of Prior Rights. This Act shall take effect on the date on which the Convention enters into force with respect to the United States. This Act applies to undertakings issued on ~~or~~<and> after the effective date of this Act. This Act does not apply to a transaction, event, obligation or duty arising out of or associated with an undertaking that was issued before the effective date of this Act.