

FINAL BILL REPORT

ESHB 2197

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Synopsis as Enacted

Brief Description: Concerning the Uniform Commercial Code.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne and Eddy; by request of Uniform Laws Commission).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

The Uniform Commercial Code (UCC), organized into 11 articles, is a model code drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in collaboration with the American Law Institute (ALI). The UCC provides a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted the UCC.

Since its original promulgation in 1951, the various articles of the UCC have been revised to adapt to changing business practices and developments in the law. The NCCUSL and the ALI adopted revised Article 1 in 2001 and revised Article 7 in 2003.

Article 1.

Article 1 of the UCC contains general definitions and principles that apply as default rules to all other articles of the UCC unless contrary provisions are specified in those articles. Issues covered under Article 1 include: principles of interpretation; parties' power to choose applicable law and vary rules by agreement; the general obligation of good faith in the performance of contracts and duties; and other general rules governing commercial transactions.

Article 7.

Article 7 of the UCC governs warehouse receipts, bills of lading, and other documents of title. These documents are essential components of the system of storing and shipping goods in commerce. A warehouse receipt is a document of title issued by a warehouse engaged in the storage of goods. A bill of lading is a document of title issued by a carrier engaged in the

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transportation of the goods. Documents of title represent the rights to the items being shipped and stored. The transfer of the document of title transfers rights in the goods.

Article 7 establishes the requirements and mechanisms for the transfer of these rights through rules governing the negotiation and transferability of documents of title. These rules, devised for tangible documents of title, generally require delivery of possession of the document in order to negotiate or transfer the document. Article 7 governs other issues related to the shipping and storage of goods in commerce, including the circumstances under which warehouses and carriers may place liens on goods being stored or shipped, and the allocation and enforcement of risk of damage or loss of goods in storage or transit.

Summary:

Revised Article 1 and Revised Article 7 of the UCC as promulgated by the NCCUSL are adopted, with minor modifications to conform to Washington law.

Article 1.

Article 1 of the UCC is reorganized and updated to conform to changing business practices and developments in the law, to conform to amendments that have been made to other articles of the UCC, and to clarify ambiguities and make technical corrections.

A specific statement is added that Article 1 applies to a transaction only if the transaction is covered within the scope of another article of the UCC.

The definition of "good faith" is amended to conform to other revised articles. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing. Various other definition provisions are reorganized and revised for consistency with other articles.

Evidence of "course of performance" is allowed in interpreting a contract, in addition to evidence of course of dealing and usage of trade. "Course of performance" refers to a sequence of conduct between the parties under a particular agreement.

The general statute of frauds for contracts governing personal property is deleted. The federal Electronic Signatures in Global and National Commerce Act is modified, limited, and superseded, with exceptions, including an exception for transactions governed by Article 2 or Article 2A of the UCC.

Article 7.

Article 7 of the UCC is revised to incorporate new rules for electronic documents of title and to update the statute in light of changing business practices and developments in the law.

An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A system using the concept of "control" is established for the negotiation and transfer of electronic documents of title. A negotiable electronic document of title is negotiated by delivery of the document, which requires voluntary transfer of control.

A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred. Rules for determining whether a system satisfies this requirement are established.

A process is established for reissuing an electronic document of title as a tangible document of title, and vice versa. Various other changes are made to accommodate electronic documents of title. Statute of frauds requirements are extended to include electronic records and signatures. Definitions of "record" and "sign" are revised so that electronic records and signatures are treated as equivalent to paper documents and written signatures. The terms "written" and "writing" are generally replaced with the term "record."

Rules regarding a warehouse's ability to limit its liability for loss or damage are revised to eliminate the requirement that the limitation on damages must set forth a specific liability per article or item, or based on value per unit of weight. Provisions governing warehouse liens are expanded to allow warehouse liens where goods are covered by a storage agreement but a warehouse receipt has not been issued.

A carrier's lien on goods covered by a bill of lading is expanded to include the proceeds of those goods if the proceeds are in the possession of the carrier. Certain requirements that are imposed on common carriers who issue bills of lading are made applicable to all issuers of bills of lading.

The federal Electronic Signatures in Global and National Commerce Act is modified, limited, and superseded, with exceptions. Electronic data storage providers and electronic data transmitters are specifically excluded from coverage under Article 7.

Other UCC Articles.

Conforming amendments are made to various other articles of the UCC to accommodate the electronic document of title changes in Article 7 and to conform to other revisions made in Article 1 and Article 7. Provisions of Article 5 are amended to re-number the article consistent with the uniform law numbering system.

Votes on Final Passage:

House	97	0	
Senate	47	1	(Senate amended)
House	95	0	(House concurred)

Effective: June 7, 2012
July 1, 2013 (Sections 902, 1403, 1502, 1508, 1511, 1514, 1516, and 1518)