EXHIBIT 1
DATE 3.22.05
SB 401

UNIFORM COMMERCIAL CODE ARTICLE 7-DOCUMENTS OF TITLE

Prefatory Note

Article 7 is the last of the articles of the Uniform Commercial Code to be revised during the preceding decade. The genesis of this project is twofold: to provide a framework for the further development of electronic documents of title and to update the article for modern times in light of state, federal and international developments. Each section has been reviewed to determine its suitability given modern practice, the need for medium and gender neutrality, and modern statutory drafting.

To provide for electronic documents of title, several definitions in Article 1 were revised including "bearer," "bill of lading," "delivery," "document of title," "holder," and "warehouse receipt." The concept of an electronic document of title allows for commercial practice to determine what records issued by bailees are "in the regular course of business or financing" and are "treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers." Rev. Section 1-201(b)(16). Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title. Conforming amendments to other Articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC. Conforming amendments to other Articles of the UCC are contained in Appendix I.

Key to the integration of the electronic document of title scheme is the concept of "control" defined in Section 7-106. This definition is adapted from the Uniform Electronic Transactions Act § 16 on Transferrable Records and from Uniform Commercial Code § 9-105 concerning control of electronic chattel paper. Control of an electronic document of title is the conceptual equivalent to possession and indorsement of a tangible document of title. Of equal importance is the acknowledgment that parties may desire to substitute an electronic document of title for an already-issued paper document and vice versa. Section 7-105 sets forth the minimum requirements that need to be fulfilled in order to give effect to the substitute document issued in the alternate medium. To the extent possible, the rules for electronic documents of title are the same or as similar as possible to the rules for tangible documents of title. If a rule is meant to be limited to one medium or the other, that is clearly stated. Rules that reference documents of title, warehouse receipts, or bills of lading without a designation to "electronic" or "tangible" apply to documents of title in either medium. As with tangible negotiable documents of title, electronic negotiable documents of title may be negotiated and duly negotiated. Section 7-501.

Other changes that have been made are:

1. New definitions of "carrier," "good faith," "record", "sign" and "shipper" in Section 7-102.
2. Deletion of references to tariffs or filed classifications given the deregulation of the affected industries. See e.g. section 7-103 and 7-309,
3. Clarifying the rules regarding when a document is nonnegotiable. Section 7-104.

4. Making clear when rules apply just to warehouse receipts or bills of lading, thus eliminating the need for former section 7-105.

5. Clarifying that particular terms need not be included in order to have a valid warehouse receipt. Section 7-202.

6. Broadening the ability of the warehouse to make an effective limitation of liability in its warehouse receipt or storage agreement in accord with commercial practice. Section 7-204.

7. Allowing a warehouse to have a lien on goods covered by a storage agreement and clarifying the priority rules regarding the claim of a warehouse lien as against other interests. Section 7-209.

8. Conforming language usage to modern shipping practice. Sections 7-301 and 7-302.

9. Clarifying the extent of the carrier's lien. Section 7-307.

10. Adding references to Article 2A when appropriate. See e.g. Sections 7-503, 7-504, 7-509.

11. Clarifying that the warranty made by negotiation or delivery of a document of title should apply only in the case of a voluntary transfer of possession or control of the document. Section 7-507.

12. Providing greater flexibility to a court regarding adequate protection against loss when ordering delivery of the goods or issuance of a substitute document. Section 7-601.

13. Providing conforming amendments to the other Articles of the Uniform Commercial Code to accommodate electronic documents of title.

Legislative Note: All cross-references in this draft to Article 1 are to Revised Article 1 (2001). In the event a state has not enacted Revised Article 1, the cross-references should be changed to refer to the relevant sections in former Article 1.

A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 1, GENERAL PROVISIONS (2001)

PURPOSE:
Updates the general provisions section of the Uniform Commercial Code, to harmonize with ongoing UCC projects and recent revisions.

ORIGIN:
Completed by the Uniform Law Commissioners and the American Law Institute in 2001.

APPROVED BY:
American Bar Association

STATE ADOPTIONS:
Alabama
Arkansas
Delaware
Hawaii
Idaho
Minnesota
Texas
U.S. Virgin Islands
Virginia

2005 INTRODUCTIONS:
Arizona
Connecticut
Illinois
Kansas
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Dakota
Oklahoma

For any further information regarding the Revised UCC Article 1, please contact John McCabe, Michael Kerr or Katie Robinson at 312-915-0195.

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Why States Should Adopt the...

Revised Uniform Commercial Code
Article 1 - General Provisions (2001)

Article 1 serves all other articles of the Uniform Commercial Code with definitions and general provisions. Revised Article 1 improves old Article 1 in the following ways:

- Modernization. The UCC has entirely been amended or revised between 1985 and 2003. Most states have enacted these revisions and amendments. It is time to bring Article 1 as up-to-date as the rest of the UCC.
- Narrower Scope. The intentionally narrowed scope of the substantive rules in Article 1 prevent them from being applied outside the UCC with potentially serious unintended consequences.
- Clarifies When Non-UCC Rules Apply. Other law will clearly supplement, but does not supplant UCC rules. This reduces interpretation problems and the opportunities for litigation.
- Good Faith. Reasonable commercial standards will affect the determination of what is good faith in any given case for the entire UCC, not just individual articles. This is a fairer standard for courts to enforce and is the existing standard in most of the substantive articles of the UCC.
- Broader Choice of Law. Parties to transactions under the UCC may choose any law that best governs their transaction, except in a consumer transaction in which the choice of law would deprive a consumer of the protections of his or her own state's law. This amendment provides for greater flexibility in doing business interstate and is good for business.
- Course of Performance Added. Absent express terms, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used in court to interpret a contract along with course of dealing and usage of trade. Courts will have more complete evidence on the meaning of contracts and the intent of the parties to them.
- Statute of Frauds Deleted. General writing and signature requirements are deleted to make way for the specific provisions for electronic records and signatures that are contained in the substantive UCC articles.

UNIFORMITY

Modifications and revisions of other articles in the Uniform Commercial Code require the revision of Article 1 of the UCC. This required harmonization of Article 1 with the other revised articles as well as the need to reflect in Article 1 recent changes and developments in law are both expressed in Revised Article 1. It is important for every state to adopt Revised Article 1 of the Uniform Commercial Code.

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SUMMARY

Revised Article 1 of the Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in 1-301, which replaces previous 1-105. Under the Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country which has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

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