

EXHIBIT NO. 6DATE 2/14/05BILL NO. SB 401Diversity of thought
Uniformity of law

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Section Title: Introductions & Adoptions Of Uniform Acts.

> Why States Should Adopt ...**ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE, GENERAL PROVISIONS (2001)**

Article 1 of the Uniform Commercial Code provides definitions and general provisions that, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. Other parts of the UCC have been revised and amended to accommodate changing business practice and development in the law. Therefore, these changes must be reflected in an update of Article 1.

Revised Article 1 contains technical, non-substantive modifications, such as reordering and renumbering of sections and adding of gender-neutral terminology. In addition, several other changes reflect an effort to add greater clarity to the provisions of Article 1. Finally, developments in the law require that certain substantive changes in Article 1 be made as well.

Revised Article 1 of the Uniform Commercial Code contains these necessary changes, which every state should adopt. The revisions include the following:

Scope. The substantive rules of Article 1 apply only to transactions governed by other articles of the UCC. There is no impact outside the UCC.

Applicability of supplemental principles of law. Revised section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. This section reflects the interrelationship between the Code's purposes and policies and the extent to which other law is available to supplement the Code.

Good Faith. Section 1-201 adopts the objective standard of "good faith" that applies in all of the recently revised UCC articles (except Revised Article 5).

Choice of Law. Default choice of law provisions have been revised and are now found in section 1-301 to replace former section 1-105.

- With respect to all transactions, an agreement by the parties to use the law of any state (or country) is generally effective, regardless of whether the transaction bears a reasonable relation to that state.
- In a consumer transaction, except in certain circumstances, a choice of law provision cannot deprive a consumer of legal protections where the consumer is located.
- Also, revised section 1-301 provides certain safeguards against abuse of choice of law provisions that did not appear in former section 1-105. For example, an agreement to use the law of a particular state or country will be ineffective to the extent the application would violate fundamental public policy of the state or country that has jurisdiction to adjudicate a dispute arising from the transaction.

Course of performance. Under revised section 1-304, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used to interpret a contract along with course of dealing and usage of trade.

Statute of Frauds. The statute of frauds requirement in former section 1-201, which was aimed at transactions beyond the coverage of the UCC, has now been deleted.

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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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