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The Uniform Commercial Code Survey: Introduction

*By Robyn L. Meadows, Carl S. Bjerre, and Stephen L. Sepinuck**

This past year has been another active one in the commercial law community. Drafting projects are underway on a number of articles of the Uniform Commercial Code (U.C.C.). In 2001, the two organizations that sponsor the U.C.C., the American Law Institute (ALI)¹ and the National Conference of Commissioners on Uniform State Laws (NCCUSL),² have considered final drafts of several articles.³ The legislative push in the states for the enactment of revised Article 9 has continued as its effective date (July 1, 2001) finally arrived. In the midst of this wave of legislative changes, courts continue to address commercial law issues. This Survey discusses recent cases that address important issues of interest to lawyers handling commercial and consumer cases. The Survey articles, particularly those on Article 2 and Article 9, also include references to changes made in the law by revisions to the U.C.C., and the payments article discusses proposed changes to other applicable law.

Since the completion of the revision of Article 9 in 1998, the focus has been on the enactment of the revision in most, if not all, jurisdictions before its effective date this past summer. This effort was successful because, as of July 1, 2001, the uniform effective date, all fifty states and the District of Columbia have adopted revised Article 9, although four states have delayed its effectiveness.⁴ Over the next several years, commercial

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1. Information on the meetings and actions taken by the ALI are available at <<http://www.ali.org>>.

2. Information on the meetings and actions taken by NCCUSL and its Drafting Committees are available at <<http://www.nccusl.org>>.

3. See the National Conference of Commissioners on Uniform State Laws, *Drafts of Uniform and Model Acts*, available at <http://www.law.upenn.edu/bll/ulc/ulc_frame.htm>.

4. Four states enacted delayed effective dates: one (Connecticut) has adopted it with an effective date of October 1, 2001, and three (Alabama, Florida, and Mississippi) have made it effective January 1, 2002. See Permanent Editorial Board Report, June 13, 2001, at 2,

lawyers will need to be familiar with the transition rules contained in part 7 of revised Article 9.⁵

After a decade, the revision process for Article 2, and with it, the updating amendments to Article 2A, is finally nearing completion.⁶ As a general matter, the revisions to Article 2 are designed to update it to accommodate electronic commerce, reflect the continuing development of commercial practices, harmonize with changes to other related statutes, and correct perceived difficulties with current sections.⁷ The revision of Article 2A, an article which is of a more recent vintage than Article 2, focused on conforming Article 2A to changes made in the revisions of Articles 2 and 9.⁸ Drafts of these articles were scheduled for consideration by both the ALI and NCCUSL in 2001. The ALI membership approved the drafts of the articles, with some amendments, in May 2001,⁹ and NCCUSL membership will consider the drafts in August 2001. Because the draft was not completed in time for the ALI Council to review the provisions prior to consideration by the ALI membership in May, the ALI Council will still need to review the drafts at its December 2001 meeting.¹⁰ If the drafts make it through these final two reviews without substantial changes, NCCUSL is expected to recommend Articles 2 and 2A to the state legislatures for adoption in early 2002.¹¹ If substantial changes are proposed by either NCCUSL or the ALI Council, the articles will need to be re-approved by the ALI membership in May 2002.¹²

With the revision of Articles 2 and 2A substantially complete, the time was ripe for final consideration of Article 1 as well. Because Article 1 provides general provisions and definitions for use in the different Articles, final approval was delayed until the final major revision project (Article 2)

nn.2, 3, available at <<http://www.nccusl.org/nccusl/peb601part1.pdf>>, and Article 9 Enactment Status Report available at <<http://www.nccusl.org/nccusl/>>.

5. See U.C.C. §§ 9-701 to 9-709 (2000).

6. For a discussion of the history of the Article 2 revision process, see Carl S. Bjerre, Robyn L. Meadows, and Stephen L. Sepinuck, *The Uniform Commercial Code Survey: Introduction*, 55 BUS. LAW. 1947 (2000).

7. See, AMERICAN LAW INSTITUTE, PROPOSED AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 2—SALES, at vi (May 2001) available at <<http://www.law.upenn.edu/bll/ulc/ucc2/ART20501.pdf>>.

8. See AMERICAN LAW INSTITUTE, PROPOSED AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 2A—LEASES, at v (May 2001) available at <<http://www.law.upenn.edu/bll/ulc/ucc2a/ART2A050.pdf>>.

9. The actions taken by the ALI with respect to the drafts of Articles 2 and 2A in May 2001 are available at <http://www.ali.org/ali/ALI2001_ActionsTKN.htm> [hereinafter ALI Actions Taken 2001].

10. See AMERICAN LAW INSTITUTE, *Annual Meeting Will Consider Proposed Amendments To Article 2 Rather Than Comprehensive Revision; Scope Provision Is Left Unchanged*, 23 A.L.I. REP. 1, 3 (Spring 2001).

11. See *id.*

12. See ALI Actions Taken 2001, *supra* note 9.

could be completed. Extensive changes to Article 1 were not made. Two potentially significant changes were made, however, in the areas of choice of laws¹³ and the general statute of frauds.¹⁴ The ALI considered and approved the final draft of Article 1 at its May 2001 meeting.¹⁵ NCCUSL will also consider Article 1 at its August meeting.

The revision process for the "Payments" Articles (Articles 3, 4, and 4A) is continuing. The Drafting Committee has met several times in the past year and considered different proposals for changes. The Drafting Committee's work is focused not on a widespread overhaul of these articles, as occurred with the Article 9 revisions, but on making changes on that which there is a consensus to improve the operation of the articles. The Drafting Committee maintains a U.C.C. Payments Articles Revision website, which contains information on the Committee's work and revision drafts under consideration.¹⁶ Among the issues under consideration in the revision process are changes necessary to facilitate truncation of checks, liability issues involving telephonically generated checks, elimination of unnecessary obstacles to the use of electronic communications, and technical corrections to the current articles to clarify issues that have arisen since the last revision.¹⁷

Revision of Article 7 (Documents of Title) is the most recent revision project undertaken by the ALI and NCCUSL. The Article 7 Drafting Committee appointed by the ALI and NCCUSL is early in the revision process.¹⁸ This Article is the only article that has not been revised since

13. Currently, parties may choose the jurisdiction; the law of which will be applicable to a transaction, with a few notable exceptions, as long as the transaction bears a reasonable relationship to the jurisdiction. *See* U.C.C. § 1-105 (2000). Under the proposed revision, in a business-to-business transaction, the parties will be able to select the law of any jurisdiction with some safeguards. In a consumer transaction, the jurisdiction must still bear a reasonable relationship to the transaction and may not deprive the consumer of the benefits of any consumer protection laws of the state of the consumer's residence or, in a sale of goods, of the state in which the goods are sold. *See* AMERICAN LAW INSTITUTE, PROPOSED FINAL DRAFT, REVISION OF UNIFORM COMMERCIAL CODE ARTICLE 1—GENERAL PROVISIONS, at vi, vii (Apr. 5, 2001), *available at* <<http://www.law.upenn.edu/bll/ulc/ucc1/ucc10401.pdf>>.

14. The general statute of frauds section, U.C.C. § 1-206, will be deleted. Because each article of the U.C.C. has its own statute of frauds provision, this section only applied if no other article applied. Revised Article 1, however, makes it clear in its scope section that it only applies if the transaction is covered by another article of the U.C.C. *See* Revised U.C.C. § 1-102. This general statute of frauds, therefore, became inoperative and unnecessary.

15. *See* ALI Actions Taken 2001, *supra* note 9.

16. *See* UCC Payments Articles Revisions Web Site, *available at* <<http://www.uccpayments.org>>.

17. *See* Links to Drafts, *id.*

18. Thank you to Prof. Drew L. Kershen, Reporter to the Article 7 Drafting Committee, for providing information on the Committee's work. Information on the work of the Committee can be reviewed at the Drafting Committee's internet homepage, *available at* <<http://www.uccarticle7.org>>.

its initial inclusion in the U.C.C. Professor Henry D. Gabriel of Loyola University of New Orleans is serving as Chair of the Drafting Committee. In March 2001, the Drafting Committee held its introductory and planning meeting. The Committee decided to undertake three tasks: (i) the revision of Article 7 to accommodate the use of electronic documents of title; (ii) the addition of a scope section to Article 7; and (iii) the adoption of amendments addressing significant problems arising under current Article 7. This approach is designed to avoid the excessive rewriting of Article 7. The Drafting Committee will meet to review proposed revision sections in the Fall of 2001 and the Spring of 2002.

Now that the revision process for Article 7 is underway, all the articles of the U.C.C. will have undergone review and revision over the past decade. These updates and the continuing revision process seek to ensure that the U.C.C. lives up to one of its fundamental policies: the modernization of commercial law.¹⁹

19. See U.C.C. § 1-102(2)(a) (2000).