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# The Uniform Commercial Code Survey: Introduction

*By Kathleen Patchel, Robyn L. Meadows, and Carl S. Bjerre\**

Well over a decade ago, the sponsoring organizations of the Uniform Commercial Code (U.C.C.) began the first comprehensive revision of the U.C.C. since its original enactment. Over this period, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) have subjected every substantive article of the U.C.C. (other than Article 7) to a revision process. Revised versions of Articles 3, 4, 5, and 8, together with conforming amendments to Article 1, have been promulgated by the sponsoring organizations, and have achieved widespread enactment in the states.<sup>1</sup> Two new articles — Article 2A (Leases) and Article 4A (Funds Transfers) — also were promulgated and have become integral parts of the fabric of U.S. commercial law in most states.<sup>2</sup>

With the promulgation of Revised Article 9 in 1998, and the likely promulgation of Revised Article 2 and Revised Article 2A next summer, it appears that this massive undertaking finally may be drawing to a close. State legislatures began considering the final version of Revised Article 9 in January 1999. As of July 1999, six state legislatures already had enacted the revision,<sup>3</sup> an indication that, as with most of the recent revisions,

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1. See *Table of Enactments of 1990 Amendments (Revised Articles 3 and 4)*, [State UCC Variations] U.C.C. Rep. Serv. (West) xix-xx (Supp. Mar. 1999); *Table of Enactments of 1995 Amendments (Revised Article 5)*, [State UCC Variations] U.C.C. Rep. Serv. (West) xxiii-xxiv (Supp. Mar. 1999); *Table of Enactments of 1994 Amendments (Revised Article 8)*, [State UCC Variations] U.C.C. Rep. Serv. (West) xxi-xxii (Supp. Mar. 1999).

2. See *Table of Enactments of 1987 Amendments (Revised Article 2A)*, [UCC State Variations] (West) xii-xiv (Supp. Mar. 1999); *Table of Enactments of 1989 Amendments (Revised Article 4A)*, [UCC State Variations] (West) xvii-xviii (Supp. Mar. 1999).

3. See 1999 Ariz. Sess. Laws 203 (amending, creating, and repealing multiple sections in ARIZ. REV. STAT.); 1999 Md. Laws 282 (amending, creating and replacing multiple sections in MD. CODE ANN., COM. LAW); 1999 Mont. Laws 305 (amending and replacing multiple sections in MONT. CODE ANN.); 1999 Neb. Laws 550 (amending, creating, repealing, and

Revised Article 9 is likely to be adopted quickly in the states. Revised Article 2 and Revised Article 2A were approved by the ALI at its annual meeting in May 1999, and are scheduled for approval by NCCUSL at its annual meeting in 2000. Once revised Articles 2 and 2A have been promulgated, the only remaining U.C.C. drafting committee will be the Article 1 committee. Revised Article 1 currently is scheduled for final approval by the sponsoring organizations in the summer of 2001.

As part of the revision process, the sponsoring organizations had proposed a third new article to the U.C.C.—Article 2B—to deal with licensing of information. In April 1999, NCCUSL and the ALI took the apparently unprecedented step of removing Article 2B from consideration as a proposed part of the U.C.C. The joint statement released by the two organizations stated that “it has become apparent that this area does not presently allow the sort of codification that is represented by the Uniform Commercial Code.”<sup>4</sup> This decision ended the ALI’s official involvement in the project; NCCUSL, however, went forward with the former Article 2B project as a uniform law, the Uniform Computer Information Transactions Act (UCITA). UCITA was adopted by NCCUSL at its July 1999 annual meeting.

In addition to Revised Article 9, other U.C.C. revisions continued to gain acceptance in the state legislatures during this year’s Survey period.<sup>5</sup> Revised Article 5 was enacted in Florida,<sup>6</sup> Michigan,<sup>7</sup> and Texas.<sup>8</sup> The recommendation that Article 6 be repealed was adopted in Michigan.<sup>9</sup>

replacing multiple sections in NEB. REV. STAT.); 1999 Nev. Stat. 104 (amending and repealing multiple sections in NEV. REV. STAT.); 1999 Tex. Gen. Laws 414 (amending, creating, repealing, and replacing multiple sections in TEX. BUS. & COM. CODE ANN.).

4. NCCUSL & ALI, *NCCUSL to Promulgate Freestanding Uniform Computer Information Transactions Act* (Apr. 7, 1999) <<http://207.103.196.3/ali/pr040799.htm>>.

5. The most recent information on the status of proposed U.C.C. revisions can be obtained from NCCUSL’s website, <<http://www.nccusl.org>>, or by calling NCCUSL at (312) 915-0195.

6. 1999 Fla. Laws ch. 137 (amending multiple sections in FLA. STAT. ANN.).

7. S.B. 72, 90th Leg., 1999 Reg. Sess. (Mich. 1999).

8. 1999 Tex. Gen. Laws 4 (amending multiple sections in TEX. BUS. & COM. CODE ANN.). With the addition of these three states, Revised Article 5 has been enacted in 40 states and the District of Columbia. For a listing of jurisdictions that have enacted Revised Article 5, see Kathleen Patchel, *The Uniform Commercial Code Survey Part I: Introduction*, 52 BUS. LAW. 1457, 1458 n.7 (1998); Kathleen Patchel & Ronald S. Gross, *The Uniform Commercial Code Survey: Introduction*, 52 BUS. LAW. 1465, 1466 n.9 (1997); Ronald S. Gross & Kathleen Patchel, *The Uniform Commercial Code Survey: Introduction*, 51 BUS. LAW. 1339, 1340 n.10 (1996).

9. 1998 Mich. Pub. Act 489 (H.B. 5644) (amending and repealing multiple sections in MICH. STAT. ANN.). Thirty-eight states now have enacted the repeal of Article 6. Four states and the District of Columbia have enacted the alternative recommended revisions to Article 6. For listings of jurisdictions previously adopting the repeal and the revision of Article 6, see Patchel, *supra* note 8, at 1458 n.9; Patchel & Gross, *supra* note 8, at 1466 n.10; Gross & Patchel, *supra* note 8, at 1340 n.12; Ronald S. Gross & Stephen C. Veltri, *The Uniform Commercial Code Survey: Introduction*, 50 BUS. LAW. 1445, 1446 n. 5 (1995); Stephen C. Veltri & Ronald S. Gross, *Introduction to the Uniform Commercial Code Survey: The Role of the Courts in a Time of Change*, 49 BUS. LAW. 1827, 1830 n.7 (1994).

There were no additional enactments of the current version of Article 2A,<sup>10</sup> revised Article 3 and its conforming amendments to Articles 1 and 4,<sup>11</sup> or Article 8<sup>12</sup> during the Survey period. Article 4A already has been adopted by all fifty states, the District of Columbia, and Puerto Rico.<sup>13</sup>

This year's feature article, *Filing and Enforcement under Revised Article 9*,<sup>14</sup> was co-authored by the Reporters for Revised Article 9, Professor Steven L. Harris and Professor Charles W. Mooney, Jr. It provides an overview of Revised Article 9, summarizing not only the most important changes to secured transactions law made by the revision, but also the many ways in which Revised Article 9 continues the rules and basic approach of its predecessor. The article then focuses in more detail on two aspects of secured transactions on which Revised Article 9 will have a significant impact: perfection of security interests by filing and enforcement of security interests upon default. In light of the evidence that Revised Article 9 is on the fast track to enactment in the states, this article should be considered required reading for every commercial lawyer.

Following the feature article, this Survey next reviews significant judicial decisions and statutory and regulatory developments affecting the substantive articles of the U.C.C., beginning with Article 2,<sup>15</sup> and concluding with Article 9.<sup>16</sup> The last two articles in the Survey address important issues and developments relating to litigation involving the U.C.C.<sup>17</sup> and international commercial transactions.<sup>18</sup>

10. The 1990 version of Article 2A has been adopted in 47 jurisdictions. For listings of states that have adopted Article 2A, see Patchel & Gross, *supra* note 8, at 1466 n.7; Gross & Patchel, *supra* note 8, at 1340 n.8; Gross & Veltri, *supra* note 9, at 1446 n. 1; Veltri & Gross, *supra* note 9, at 1828 n.3.

11. Revised Article 3 and its conforming amendments to Articles 1 and 4 have been adopted in 49 jurisdictions, including 47 states, the District of Columbia, and Puerto Rico. The three states that have not adopted Revised Article 3 are New York, South Carolina, and Rhode Island. For listings of jurisdictions that have adopted Article 3, see Patchel, *supra* note 8, at 1458 n.6; Gross & Patchel, *supra* note 8, at 1340 n.9; Gross & Veltri, *supra* note 9, at 1446 n.2; Veltri & Gross, *supra* note 9, at 1828 n.4.

12. The 1994 Revision to Article 8 has been adopted in 50 jurisdictions, including 48 states, the District of Columbia, and Puerto Rico. The two states that have not adopted Revised Article 8 are South Carolina and Rhode Island. For listings of jurisdictions that have adopted revised Article 8, see Patchel, *supra* note 8, at 1458 n.10; Patchel & Gross, *supra* note 8, at 1467 n.11; Gross & Patchel, *supra* note 8, at 1341 n.13; Gross & Veltri, *supra* note 9, at 1446 n.6.

13. See Table of Enactments of 1989 Amendments (Article 4A), [UCC State Variations] U.C.C. Rep. Serv. (West) xvii-xvii (Supp. Mar. 1999).

14. 54 BUS. LAW. 1965 (1999).

15. John D. Wladis et al., *Sales*, 54 BUS. LAW. 1831 (1999).

16. Steven O. Weise, *U.C.C. Article 9: Personal Property Secured Transactions*, 54 BUS. LAW. 1935 (1999).

17. Steven W. Sanford, *Litigation*, 54 BUS. LAW. 1985 (1999).

18. Peter Winship, *International Commercial Transactions: 1998*, 54 BUS. LAW. 2001 (1999).

As the U.C.C. revision process winds down, and the states first create, and then resolve, nonuniformity through their enactment of the revised U.C.C., the interpretative process will continue. Through its interpretation of the revisions, and its determinations of the relationship of those revisions to prior precedents, the judiciary will be just as important as the state legislatures in determining the ultimate success of the current revision process.<sup>19</sup> The judiciary's degree of success in carrying out that role in turn will provide one of the primary subjects of discussion in this Survey for years to come.

19. See generally Veltri & Gross, *supra* note 9.