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ROLL NUMBER

DESCRIPTION

1151

2005 HOUSE JUDICIARY

HB 1151

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1151

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/11/05

Tape Number	Side A	Side B	Meter #
2	xx		14.4-23.8

Committee Clerk Signature K Penrose

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1151.

Representative Kretschmar: Explained the bill. I am the chairman of the ND Uniform Law Commission, Rep. Klemin and Sen. Trenbeath are also members and Jay Buringrud of our LC staff. HB 1151 is the Uniform Commercial Code, revision of article 7 of that code. The Uniform Commercial Code has been adopted by all of the original states. I believe ND adopted it in 1965 and the national commission of Uniform Law Commissioners over the past 10-12 years has been working to revise the chapters of the code, and its articles to comply with modern practice and the electronic media. Article 7 has been revised, has been approved by the Uniform Law Commission in 1999 or 2001, and has been recommended by the American Bar Association also to be sent out to the states for consideration and hopefully adoption. To date, article 7 has been adopted by 8 states; one of them is Minnesota. We do a lot of commerce between ND and MN, so that certainly is helpful for us. Idaho is in our area, is another state that has adopted it. It

is being considered in a number of states this legislative season. It deals with documents of title. The substantive changes in the law deal basically with electronic transfers of title, instead of using paper, instruments of title are being able to use electronic transfers and so forth. It's concerned with property in transit, or property in storage somewhere. When a ND farmer puts his wheat in a grain elevator, he gets some document of title to the effect that the grain's in the elevator under the control of the people who run the elevator, but it's still owned by the farmer. It's his wheat until he sells it through the elevator. That basically is what this document is concerned with. Bills of Lading, documents of title, warehouse receipts, things of that nature. We have the original article 7 in law in ND. HB 1151, if adopted, would put this in place of it. It would be the modern, up-to-date version of this article 7. Basically, from the revision, it makes way for the electronic documents of title and that is the way commerce in our country is going. So it would be a good thing, in my judgment, that ND should adopt this new act to provide for those ways to transfer title and issue and distribute documents of title and transfer them among the owners of the property.

Chairman DeKrey: Is there anyone here that is going to oppose this bill. (no one answered)

Representative Onstad: The original document, is there ever a time when something has come back, and they need to go back to the original document, like a title.

Representative Kretschmar: There will still be documents of title I think issued on paper, a hard copy.

Representative Onstad: If a document is transferred electronically to another state, does that state ever or even ND we might receive some documents electronically, is there ever a chance where you will need the original document, will it be a hard time to get that.

Representative Kretschmar: Under the provisions of this bill, as I understand it, those electronic transfers will be the title.

Representative Koppelman: With these uniform acts, you mentioned the goal was to get all the states to adopt them. Does that usually happen, or typically how many states do adopt them and if not all of them do, what's the result of that.

Representative Kretschmar: All of the states have adopted the original Article 7 which is now law today in ND. The National Commission is working to have the new Article 7 adopted because it modernizes it and hopefully over a period of years all the states will adopt that one also. I don't think it is one of the more controversial articles in the Uniform Commercial Code at this point in time. Some articles are a little more controversial, but not this one.

Chairman DeKrey: We will close the hearing on HB 1151. What are the committee's wishes on HB 1151.

Representative Klemin: Article 7 was adopted in 1965, and so we are now 40 years after the fact, there has been a lot of things that have happened in these 40 years and so one of the main things that Representative Kretschmar said, to recognize electronic documents. In the last session, we did some other things in the electronic area as well. This also clarifies and updates some of the other sections based on things that have happened over the last 40 years. We really need to bring this up to date. We are in the forefront of the states adopting this.

Representative Koppelman: I move a Do Pass.

Representative Maragos: I second the motion.

14 YES 0 NO 0 ABSENT DO PASS CARRIER: Rep. Kretschmar

Date: 1/11/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1151

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 14 No Ø

Absent Ø

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1151: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1151 was placed on the Eleventh order on the calendar.

2005 SENATE JUDICIARY

HB 1151

2005 SENATE STANDING COMMITTEE MINUTES

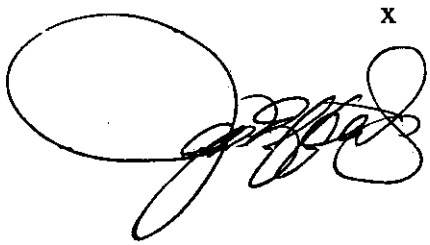
BILL/RESOLUTION NO. HB 1151

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
1	x		3435 - 3982
1		x	5538 - 5699

Committee Clerk Signature 

Minutes:

Chairman Traynor opened the hearing on HB 1151, a bill relating to the uniform commercial code. All members were present.

Senator Trenbeath introduced the bill. The bill is the uniform law commission rewrite of the uniform commercial code article 7 relating to documents of title. The meat of the bill begins on page 11. Up to that point is revision of reference and definitions. It is a general rewrite of that section of code. The bill comes recommended by the national commission as well as the state commission of which he is a member.

Senator Traynor asked if this is a complete rewrite.

Senator Trenbeath said it is a rewrite of article 7.

Senator Triplett asked if there is a generic description of the changes available.

Senator Trenbeath said yes, he can run it off for the committee, it is a 2 or 3 page description.

Senator Nelson asked if the term tangible document means it must be on paper as opposed to electronic.

Senator Trenbeath said yes.

Senator Triplett said on page 3, lines 4 - 7 are is definition.

Senator Nelson said this is very much like the bill the committee heard last week, the same kinds of references.

Senator Trenbeath said he will also get information on how many other states have adopted the rewrite.

Chairman Traynor said the committee will await further information and closed the hearing on HB 1151.

Senator Trenbeath said he has distributed to the committee the online summary of the uniform act. (meter 5538, side B)

Senator Nelson moved a do pass on HB 1151.

Senator Triplett seconded the motion.

The motion passed on a roll call vote 6-0-0.

Senator Trenbeath will carry the bill.

Date: 3/22/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1151

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Senator Nelson Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total	(Yes)	6	6 No	0	0
Absent		0			0

Floor Assignment Sen. Trenbeath

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 22, 2005 5:50 p.m.

Module No: SR-52-5810
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1151: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1151 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1151

SUMMARY

Uniform Commercial Code - Revised Article 7 (2003)

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its single most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to

"execute or adopt a tangible symbol" and "to attach or logically associate with the record an electronic sound, symbol or process." Within Revised Article 7, wherever the term "writing" or an equivalent may have been used before revision, the term "record" is uniformly used. When a document is required to be signed anywhere in Revised Article 7, electronic signing meets the test.

In addition, Revised Article 7 provides language stating expressly that it modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. This express language, permitted in the federal act, avoids any issue of federal preemption. The federal statute allows specific tailoring for the purposes of incorporating electronic records and signatures into state law.

Establishing the Unique Token

It is not possible to transfer an electronic document of title in the same manner as a tangible document of title, particularly in terms of negotiating it. It cannot be guaranteed that a transfer directly from one person to the next by delivery and/or signature will transfer the authentic original document of title. An electronic alternative to the tangible system is necessary. To accomplish the equivalent system for electronic documents of title, Article 7 adapts the concept of "control" to the purpose. It is not a brand-new concept. It initially was developed in Article 8 of the Uniform Commercial Code for investment securities in the indirect holding system. The 1999 revisions to Article 9 adapted the concept further for secured transactions. Further adaptation of the concept occurred in Section 16 of the Uniform Electronic Transactions Act for promissory notes. This latter adaptation is most important for Revised Article 7, because the issues of negotiation for promissory notes are very similar to those for documents of title.

A person has control of a document of title for Article 7 purposes "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." Such a system exists when it establishes a "single authoritative copy ...which is unique, identifiable and ... unalterable." The authoritative copy must identify the person in control or the next person to whom the document has transferred. The person in control determines to whom the document is next transferred. Further, the standard requires that copies that are not authoritative, including copies of the authoritative copy, must be readily identifiable as not being the authoritative copy.

There is more than one way to meet this set of standards, unlike negotiation of a paper document, which occurs in one way only. One way to establish the single authoritative document is to have a single custodian of the electronic record, who enters all transfers of the document and identifies the person in control on its records, records that for all who want to know is the source of the single authoritative copy. In such a system, the person in control notifies the custodian of any transfer or authorized change in the document, who then notates its records appropriately and notifies the person in control and other relevant parties of the action. A transfer would obviously shift control from transferor to transferee. The transferee would become the new person in control.

Encryption technology may provide other methods for meeting these standards. Some kind of hybrid system of encryption and custodian may arise. UCC Article 7 prescribes no system per se and more than one system may develop over time. It is not possible to predict what technology may finally bring to electronic transfer systems. Revised Article 7 allows the technology to develop without need to amend it later when a new kind of technology comes along.

Interchangeability

UCC Article 7 provides for an electronic system of transfer for electronic documents of title and for the traditional paper system of documents of title which includes negotiable documents of title. There are dual tracks. Control is the operative term with electronic documents and negotiation is the operative term for tangible documents of title. With respect to the transfer of rights in a particular group of goods, can electronic documents be converted to tangible documents and vice versa? UCC Article 7 provides for such conversions. An electronic document may be converted

when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

Other Benefits to Revision

The revisions to UCC Article 7, beyond making way for electronic documents of title, primarily update or clarify existing rules of law. There are references to tariffs and regulations in original UCC Article 7 that no longer exist with deregulation. These have been eliminated in the revision. There is nothing as significant as the rules for electronic documents of title. But these rules alone make it imperative for the states to enact the revision to UCC Article 7 as soon as practicable. Documents of title are fundamental to the transfer of goods in interstate commerce. The new rules are wholly commerce friendly and every state needs them as soon as possible.

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