

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

4032

2005 SENATE JUDICIARY

SCR 4032

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 2, 2005

Tape Number	Side A	Side B	Meter #
1	X		420 - End
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Relating to Uniform Commercial Codes - Revised Article 1

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Senate Concurrent Resolution:

This resolution was a result of failed SB 2143. Sen. Traynor presented this resolution to the committee to commensurate all parties involved into working to a successful Uniform Law Bill.

Testimony in Opposition of the Senate Concurrent Resolution:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Trenbeath made the motion to do pass and **Senator Triplett** seconded the motion. All were in favor, motion passes.

Carrier: **Sen. Nelson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing.

Roll Call Vote #: /

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *SB CR 4032*

Senate	Judiciary	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Trenbeath Seconded By Sen Triplett

[illegible]

Total (Yes) 6 No 0

Absent	0
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Floor Assignment Sen Nelson

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2005 1:19 p.m.

Module No: SR-22-1691
Carrier: Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4032: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4032 was placed on the
Eleventh order on the calendar.

2005 HOUSE JUDICIARY

SCR 4032

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

House Judiciary Committee

☐ Conference Committee

Hearing Date 3/15/05

Tape Number	Side A	Side B	Meter #
1		xx	28.8-41.4
1		xx	42.6-43.8
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Charging).

Chairman DeKrey: We will open the hearing on SCR 4032.

Representative Lawrence Klemin: Support (see Uniform Law Commissioners handout). I am one of the Uniform Law Commissioners in ND, and we did a lot with the Uniform Laws Commission. We introduced SB 2143, which proposed to adopt Uniform Commercial Code, article 1 as revised by the ULC, and that bill was not passed by the Senate, but rather they substituted the SCR 4032. We had, speaking for the ULC, at this point, we have no objection to studying this issue during the next interim. I think that once, if there are some specific concerns, this is not a very long article in the UCC, and the UCC has been adopted everywhere, and in fact Article 1 as revised, has been adopted in a number of states already too, and been introduced in quite a few other states, as you'll see from the handout I've got here. The only state so far that, of the 2005 introductions that it's failed in, is in ND, and it has passed in some other states. So I'm not entirely certain what the objections to this are, but certainly during the course of the next

interim, then we would have the opportunity to hear from those who have concerns about this, what their specific objections are, and perhaps during that study we can determine if there's a need to tailor this to the needs of ND. I guess from the standpoint of the Uniform Laws Commission, we would support SCR 4032.

Representative Onstad: SB 2143 was trying to adopt the Uniform Code...

Representative Klemin: SB 2143 was to adopt the revision of Article 1 of the Uniform Commercial Code, the Uniform Commercial Code (UCC) itself, it actually much longer than that bill and covers a whole section of our current NDCC, it has 9 articles in it.

Representative Onstad: I am assuming the objection was (can't understand what was said).

Representative Klemin: I don't know exactly what their objections were, I guess we can hear from Marilyn Foss if she is going to present something on it, but there was an objection made to some parts of the revised article 1. Revised Article 1 is not a very long article. The beginning article of the UCC has some definitions and has some issues. I think one of the concerns was that there choice of law provisions in there, that might have been of concern. But we do have an article 1 now, and we've updated several of the other articles in the UCC. So right now, article 1 in our UCC is a little bit outdated because it doesn't take into account some of the things we've already changed in other parts of the UCC.

Chairman DeKrey: Thank you. Further testimony on SCR 4032.

Marilyn Foss, ND Bankers Association: (see written testimony).

Representative Koppelman: Just a general question, I think we all understand the reason for uniform state laws, that it would help prevent federal preemption in areas, especially in interstate commerce, but I'm wondering if your stance on this is really a hint of things to come, are states

sort of reasserting their sovereignty and saying, we need some uniformity, but we don't have to be mirror images of one another and if something is better in our state, we can do it that way.

Marilyn Foss: I think that would be a fair statement. We are taking a position, which has been discussed out loud, which is not necessarily out there supporting... And NCCUSL is not the only group, there are a number of groups who prepare what are model laws, and I think that you will find people being more active in examining those and deciding whether we really do need those laws in the state.

Chairman DeKrey: Thank you. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SCR 4032.

Representative Koppelman: I move a Do Pass and place on the Consent calendar.

Representative Kretschmar: Seconded.

12 YES 0 NO 2 ABSENT

DO PASS AND PLACE ON CONSENT CALENDAR

CARRIER: Rep Klemin

Date: 3/15/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4032

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass + Place on Consent Calendar

Motion Made By _____ Seconded By _____

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

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2005 11:40 a.m.

Module No: HR-47-4981
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4032: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SCR 4032 was placed on the Tenth order on the calendar.

2005 TESTIMONY

SCR 4032



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
Delaware
Hawaii
Idaho
Minnesota
Texas
U.S. Virgin Islands
Virginia

2005 INTRODUCTIONS:

Arizona	Nebraska
Arkansas	New Hampshire
Connecticut	New Mexico
Illinois	North Dakota
Kansas	Oklahoma
Montana	

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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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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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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TESTIMONY OF MARILYN FOSS -SCR 4032

(UCC Revised Article 1)

Chairman DeKrey, members of the Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am here this morning because NDBA (along with most of the other state bankers associations in the country) oppose the adoption of proposed, revised UCC Article 1. This Article sets out "general provisions" that are used to interpret the balance of the UCC.

This committee is well aware that past revisions to the Uniform Commercial Code tended to be cast in a "must do" mode by affected commercial interests, including the banking industry, because we and our customers are beneficiaries of state laws that set clear and apply uniformly across state lines. That is why NDBA has traditionally appeared to support UCC revisions. They updated and improved the law in a way that was understood and accepted, if not unanimously desired by all interested parties. However, in our view anyway, now it seems that more frequently, we are finding we can oppose revisions that create questions, rather than clarity, and that are, frankly, unnecessary. UCC Revised Article 1 is such a case.

NCCUSL approved Revised UCC 1 in 2001. It has been fraught with controversy and has been formally opposed by more than 2/3 of the states' bankers' associations such as NDBA. It was introduced and withdrawn in North Dakota in the last session. While some version of the revisions has been adopted by a few states, all of those substantively revised it first. Most states, including big commercial states such as California, New York, and Illinois, have either rejected the revision or not introduced it at all. Meanwhile, commerce continues to flow across state lines unimpeded.

To us this means Revised Article 1 changes are not only not urgent, they are not necessary at all. Bankers, and, I suspect, most of your constituents, do not desire or approve of adding new and different laws, just because someone has drafted one. At NDBA, we have decided to take the position that North Dakota's law books should not be expanded unless there is a solid reason to do so and unless someone who is actually affected stands up before you and testifies that North Dakotas needs a new law to solve a problem that occurs in North Dakota, and explains how the proposed new law does just that. SB 2143 does not meet that common sense standard and we ask you to give it a DNP.

Thank you.