

# SENATE BILL REPORT

## ESHB 2197

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As of February 17, 2012

**Title:** An act relating to the Uniform Commercial Code.

**Brief Description:** Concerning the Uniform Commercial Code.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne and Eddy; by request of Uniform Laws Commission).

**Brief History:** Passed House: 2/09/12, 97-0.

**Committee Activity:** Judiciary: 2/17/12.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Aldo Melchiori (786-7439)

**Background:** The Uniform Commercial Code (UCC), organized into 11 articles, is a model code drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in collaboration with the American Law Institute (ALI). UCC provides a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted UCC. Since its original promulgation in 1951, the various articles of UCC have been revised to adapt to changing business practices and developments in the law. NCCUSL and ALI adopted revised Article 1 in 2001 and revised Article 7 in 2003.

Article 1. Article 1 of UCC contains general definitions that apply throughout UCC unless otherwise provided in another article. In addition, Article 1 contains many general principles that apply as default rules to all other articles of UCC unless contrary provisions are specified in those articles. Issues covered under Article 1 include principles of interpretation; parties' power to choose applicable law and vary rules by agreement; the general obligation of good faith in the performance of contracts and duties; and other general rules governing commercial transactions.

Article 7. Article 7 of UCC governs warehouse receipts, bills of lading, and other documents of title. These documents are essential components of the system of storing and shipping goods in commerce. A warehouse receipt is a document of title issued by a warehouse engaged in the storage of goods. A bill of lading is a document of title issued by a carrier engaged in the transportation of the goods. Documents of title represent the rights to the

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items being shipped and stored. The transfer of the document of title transfers rights in the goods.

Article 7 establishes the requirements and mechanisms for the transfer of these rights through rules governing the negotiation and transferability of documents of title. These rules, devised for tangible documents of title, generally require delivery of possession of the document in order to negotiate or transfer the document. Article 7 governs other issues related to the shipping and storage of goods in commerce, including the circumstances under which warehouses and carriers may place liens on goods being stored or shipped, and the allocation and enforcement of risk of damage or loss of goods in storage or transit.

**Summary of Bill:** Revised Article 1 and Revised Article 7 of UCC as promulgated by NCCUSL are adopted, with minor modifications to conform to Washington law.

Article 1. Article 1 of UCC is reorganized and updated to conform to changing business practices and developments in the law, to conform to amendments that have been made to other articles of UCC, and to clarify ambiguities and make technical corrections. A specific statement is added that Article 1 applies to a transaction only if the transaction is covered within the scope of another article of UCC.

The definition of good faith is amended to conform to other revised articles, except Article 5. Good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing. Various other definition provisions are reorganized and revised for consistency with other articles.

Evidence of course of performance is allowed in interpreting a contract, in addition to evidence of course of dealing and usage of trade. Course of performance refers to a sequence of conduct between the parties under a particular agreement.

The general statute of frauds for contracts governing personal property is deleted. The federal Electronic Signatures in Global and National Commerce Act is modified, limited, and superseded, with exceptions, including an exception for transactions governed by Article 2 or Article 2A of UCC.

Article 7. Article 7 of UCC is revised to incorporate new rules for electronic documents of title and to update the statute in light of changing business practices and developments in the law. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A system using the concept of control is established for the negotiation and transfer of electronic documents of title. A negotiable electronic document of title is negotiated by delivery of the document, which requires voluntary transfer of control. A person has control of an electronic document of title 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. Rules are established for determining whether a system satisfies this requirement.

A process is established for reissuing an electronic document of title as a tangible document of title, and vice versa. Various other changes are made to accommodate electronic documents of title. Statute of frauds requirements are extended to include electronic records

and signatures. Definitions of record and sign are revised so that electronic records and signatures are treated as equivalent to paper documents and written signatures. The terms written and writing are generally replaced with the term record.

Rules regarding a warehouse's ability to limit its liability for loss or damage are revised to eliminate the requirement that the limitation on damages must set forth a specific liability per article or item, or based on value per unit of weight.

Provisions governing warehouse liens are expanded to allow warehouse liens where goods are covered by a storage agreement but a warehouse receipt has not been issued. In addition, clarification is provided on the priority rules that apply regarding the claim of a warehouse lien as against other interests. A carrier's lien on goods covered by a bill of lading is expanded to include the proceeds of those goods if the proceeds are in the possession of the carrier. Certain requirements that are imposed on common carriers who issue bills of lading are made applicable to all issuers of bills of lading.

The federal Electronic Signatures in Global and National Commerce Act is modified, limited, and superseded, with exceptions. Electronic data storage providers and electronic data transmitters are specifically excluded from coverage under Article 7.

Other UCC Articles. Conforming amendments are made to various other articles of UCC to accommodate the electronic document of title changes in Article 7 and to conform to other revisions made in Article 1 and Article 7. Provisions of Article 5 are amended to re-number the article consistent with the uniform law numbering system.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: We are currently in the minority of states that have not adopted the new UCC provisions. It is important to keep the UCC as consistent as possible to facilitate interstate commerce. We need to keep up on the trends in the law regarding the use of electronic documents.

**Persons Testifying:** PRO: Representative Pedersen, prime sponsor; Mark Patterson, WSBA Business Section.