

# HOUSE BILL REPORT

## HB 2197

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**As Reported by House Committee On:**  
Judiciary

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

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

**Sponsors:** Representatives Pedersen, Rodne and Eddy; by request of Uniform Laws Commission.

**Brief History:**

**Committee Activity:**

Judiciary: 1/9/12, 1/19/12 [DPS].

**Brief Summary of Substitute Bill**

- Adopts revisions to Uniform Commercial Code Article 1, governing general provisions, and Article 7, governing documents of title.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Staff:** Edie Adams (786-7180).

**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). The UCC provides a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted the UCC.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Since its original promulgation in 1951, the various articles of the UCC have been revised to adapt to changing business practices and developments in the law. The NCCUSL and the ALI adopted revised Article 1 in 2001 and revised Article 7 in 2003.

#### Article 1.

Article 1 of the UCC contains general definitions that apply throughout the 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 the 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 the 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 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, require delivery of possession of the document, or indorsement of the named holder and subsequent delivery of possession, in order to negotiate or transfer the document. Article 7 also 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.

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#### **Summary of Substitute Bill:**

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

#### Article 1.

Article 1 of the 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 the 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 the 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, whereas "course of conduct" refers to a sequence of conduct between the parties before entering into the agreement.

The provision establishing a general statute of frauds for contracts governing personal property is deleted. Statute of frauds requirements are dealt with within each separate article of the UCC.

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 the UCC.

#### Article 7.

Article 7 of the 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. Delivery of a negotiable electronic document 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 for determining whether a system satisfies this requirement are established.

Processes for reissuing a document of title in an alternative medium are provided. Upon the request of a person entitled under a document of title, the issuer of an electronic document of title may issue a substitute tangible document of title if certain conditions are met. Similar requirements apply for reissuing a tangible document of title as an electronic document of title.

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 the amount of damages it will be liable for in case of loss or damage are revised. 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, is eliminated.

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 the 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.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill includes amendments that re-number all sections of Article 5 of the UCC to be consistent with the uniform law numbering system. The substitute bill also makes numerous technical changes for style and consistency with the model act, and to correct cross-references and other errors.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) The Uniform Law Commission (ULC) was created in the late 1800s to keep Congress out of the regulation of commercial law. The UCC, one of the hallmarks of the ULC, provides uniformity and predictability for interstate commercial transactions. Maintaining that uniformity is important. Washington is one of only a handful of states that have not adopted revised Articles 1 and 7.

Revised Article 1 adopts few substantive changes and those changes do not deal with new concepts. The bill clarifies that the UCC applies only to transactions governed by the UCC. The statute of frauds provision is deleted since each article addresses this issue. The change to the definition of good faith is not much of a change since other articles already use this definition.

The Article 7 revisions conform the law to modern business practices. The vast majority of documents of title these days are electronic documents. The Article 7 revisions incorporate rules for electronic documents, including the concept of "control" of electronic documents, which functions as the substitute for possession for tangible documents.

There are some changes from the model act to conform to Washington law. The bill adopts a variation on how the statute relates to the federal Electronic Signatures in Global and National Commerce Act to make clear it does not apply to Articles 2 and 2A. Another modification makes it clear that Article 7 does not apply to a person in the capacity of an electronic data storage provider. Article 7 deals with real goods, not electronic data.

(Opposed) None.

**Persons Testifying:** Mark Patterson, Washington State Bar Association, UCC Committee.

**Persons Signed In To Testify But Not Testifying:** None.