

UCC Legislative Update

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Happy new year to all! With the new year comes the first legislative update of 2009.

Revised Article 1

As of January 1, 2009, Revised Article 1 was in effect in thirty-four states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia.

With only five enactments, 2008 saw the least legislative activity on Revised Article 1 since 2004, when only four states enacted it. The recent promulgation of a substitute § 1-301, a stumbling block for many state legislatures, might grease the skids for additional enactments in 2009 and beyond. On the other hand, state legislatures continue to grapple with the definition of "good faith." Of the 34 enacting states, 23 have adopted the uniform § 1-201(b)(20) definition, while 11 have retained the pre-revised definition that imposes a different good faith standard on merchants and non-merchants. And, of course, state legislators may well consider the current economic crisis a higher priority than harmonizing their commercial codes.

As of January 20 (admittedly early in the 2009 legislative season), the only bill to enact Revised Article 1 pending in any of the non-enacting states or the District of Columbia – except to the extent that Massachusetts HB 4302, which has been stuck (under several bill numbers) in legislative limbo for nearly four years, might resurface – is Washington [SB 5155](#), introduced January 15. The introduced version of SB 5155 appears to be drawn directly from the language of official Revised Article 1 circa 2001 and includes the no-longer-official version of Revised 1-301[†] (the one that all 34 enacting states have declined to adopt). The Washington Senate Judiciary Committee has scheduled SB 5155 for public hearing on January 23. Hopefully, at some point in the legislative process, someone will insist on amending SB 5155 to replace its 1-301 with the NCCUSL-and-ALI-approved substitute 1-301, or something in the same spirit.

Elsewhere, scuttlebutt has it that bills are forthcoming in Alaska, Georgia, and Oregon; but, as of January 20, there is no sign of them.

[†] In May 2008, the ALI approved a substitute choice-of-law provision, which the NCCUSL had previously approved, that effectively reinstated the pre-revised 1-105. See Lance Liebman et al., Proposal to Amend Official Text of § 1-301 (Territorial Applicability; Parties' Power to Choose Applicable Law) of Revised Article 1 of the UCC (2008), available at <http://www.ali.org/doc/uccamendment.pdf> (last visited Jan. 20, 2009).

Article 2 and 2A Amendments

As of January 20, 2009, only three state legislatures (Kansas, Nevada, and Oklahoma) had considered bills proposing to enact the 2003 amendments to UCC Articles 2 and 2A. In 2005, Oklahoma amended Sections 2-105 and 2A-103 of its Commercial Code to add that the definition of "goods" for purposes of Articles 2 and 2A, respectively, "does not include information," see 12A Okla. Stat. Ann. §§ 2-105(1) & 2A-103(1)(h) (West Supp. 2008), and amended its Section 2-106 to add that "contract for sale" for purposes of Article 2 "does not include a license of information," see id. § 2-106(1). The net effect is similar to having enacted Amended §§ 2-103(k) & 2A-103(1)(n), both of which exclude information from the meaning of "goods" for purposes of Article 2 and 2A, respectively. Otherwise, no state has enacted the 2003 amendments and rumor has it that the Uniform Law Commission (nee NCCUSL) will withdraw its support.

Article 3 and 4 Amendments

As of January 1, 2009, the 2002 amendments to Article 3 and 4 were in effect in six states: Arkansas, Kentucky, Minnesota, Nevada, South Carolina, and Texas.

The New York legislature, the sole remaining state yet to adopt the 1990 revisions to Article 3 and 4, entertained a bill in 2007 and 2008 that would have enacted the 1990 revisions as amended by the 2002 amendments. However, that bill floundered.

The only other bill introduced as of January 20, 2009 proposing adopting the 2002 amendments to UCC Articles 3 & 4 (along with certain conforming amendments to other articles) was Oklahoma [HB 2588](#), which was introduced on February 4, 2008. [SB 1708](#) subsequently replaced HB 2588, passed the Oklahoma Senate on March 11, and passed the Oklahoma House subject to amendment on April 16. The Senate rejected the House amendment resulting in a conference committee, whose product eventually passed both chambers. Governor Brad Henry signed SB 1708 on June 3, bringing to seven the number of states to have enacted the 2002 amendments. Oklahoma SB 1708 took effect on November 1, 2008. Twenty-three days later, a majority of the Oklahoma Supreme Court struck down SB 1708 as unconstitutional because it violated the "one subject" requirement of Article 5, § 57 of the Oklahoma Constitution. *Weddington v. Henry*, [2008 OK 102](#) (Okla. Nov. 24, 2008).^{††} So, it's back to the drawing board in Oklahoma.

Revised Article 7

As of January 1, 2009, Revised UCC Article 7 was in effect in thirty-one states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, and West Virginia.

^{††} Thanks to McAfee & Taft's Bob Luttrell for calling *Weddington v. Henry* to my attention.

As of January 20, the only bill to enact Revised Article 7 pending in any of the non-enacting states or the District of Columbia (with the same proviso as above about Massachusetts HB 4302 or its spawn) is Washington [SB 5154](#), introduced January 15. The Washington Senate Judiciary Committee has scheduled SB 5154 for public hearing on January 23.