

## UNIFORM COMMERCIAL CODE COMMITTEE

### REPORT PREPARED FOR THE SEPTEMBER 20, 2007 COUNCIL MEETING

#### BUSINESS LAW SECTION

##### 1. Next Scheduled Meeting of the Committee

A meeting of the Committee will be held on October 12, 2007. I have invited Professor James J. White to participate and he has accepted this invitation. (See Attachment A).

##### 2. Council Approval

The Committee is not seeking Council approval of any matter at this time.

##### 3. Membership

The list of members of the Committee was updated at the end of 2005.

##### 4. Accomplishments Toward Committee Objectives

I am keeping abreast of current developments which are transmitted to the Committee members and other interested parties on a periodic basis.

##### 5. Meetings and Programs

Although not directly sponsored by your Committee, the following two presentations will be made at ICLE's Family & Closely Held Business Institute to be held in Plymouth, Michigan on October 18, 2007:

(a) Drafting Contract Terms and Conditions from a Buyer's and a Seller's Perspective (Patrick E. Mears)

(b) Dealing With Financially Troubled Suppliers or Customers: What You Need to Know Now (Lisa Sommers Gretchko)

##### 6. Publications

Articles on UCC topics were published in the Summer 2006 issue of the Michigan Business Law Journal.

##### 7. Legislative/Judicial Administrative Developments

The following are recent Michigan decisions involving UCC provisions:

(a) Rembrandt Construction, Inc. v. Butter Manufacturing Company (Case No. 270577) (Michigan Court of Appeals, Nov. 21, 2006). This decision involved consideration of UCC § 2-105(1) (definition of "goods") and UCC § 2-725 (statute of limitations for actions based on breaches of contracts for sale of goods).

(b) Oxford Bank v. Vicki S. Rohlman (Case No. 267784) (Michigan Court of Appeals, Feb. 22, 2007). This decision addressed issues of a dishonoring bank's "midnight deadline" (UCC § 4-302), breach of warranty and right of chargeback (UCC § 4-207) and a collecting bank's duty of ordinary care (UCC § 4-202).

(c) James B. Engel v. BayWinds Federal Credit Union (Case No. 275443) (Michigan Court of Appeals, May 22, 2007). Decision interpreted and applied Article 9 standards for attachment of a security interest in personal property (UCC § 9-203).

(d) Precision Master, Inc. v. Mold Masters Company (Case Nos. 268501 and 268938) (Michigan Court of Appeals, July 12, 2007). Decision addressed alleged breach of an installment contract under UCC § 2-612(3), adequate assurance of future performance under UCC § 2-609 and cost of cover as a buyer's remedy for seller's breach under UCC 2-712(1).

(e) General Motors Corporation v. Alumi-Bunk, Inc. (Case No. 270430) (Michigan Court of Appeals, July 24, 2007). This opinion addressed the scope of Article 2 of the UCC under UCC § 2-102, the definition of "goods" in UCC § 2-105(1) and the application of the parol evidence rule in UCC § 2-202.

Finally, a recent status report on adoptions of the revised official text of the UCC throughout the United States is attached as Attachment B.

#### 8. **Miscellaneous**

Nothing else to report.

Respectfully submitted,

Patrick E. Mears

**Patrick Mears - Re: State Bar of Michigan/Uniform Commercial Code Committee of Business Law Section**

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**From:** "James J. White" <jjwhite@umich.edu>  
**To:** "Patrick Mears" <patrick.mears@btlaw.com>  
**Date:** 9/16/2007 1:47 PM  
**Subject:** Re: State Bar of Michigan/Uniform Commercial Code Committee of Business Law Section

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the 12th in the pm should work. we should adopt some form of Art 1 for sure. what else have we not adopted of the new set of revisions and amendments? (rev art 2 and ucita are dead i think but we should adopt some form of the others probably) jim At 12:36 PM 9/16/2007, you wrote:

Jim: Thank you. I was looking at sometime during the day of Friday, October 12th, in the afternoon. Would that day work for you? If so, please let me know what time might work and I will make arrangements for the call, etc. Concerning Article 1, the Committee has not yet been involved in an effort to enact it here in Michigan. What, if anything, would you suggest that we do to assist? We have a BLS Council Meeting in Novi this coming Thursday and I would like to mention this and, if appropriate, make a motion/recommendation to the Council.

Thank you again. Pat.

Patrick E. Mears  
 Co-Chair Finance, Insolvency &  
 Restructuring Department  
 Barnes & Thornburg LLP  
 300 Ottawa Avenue, NW  
 Suite 500  
 Grand Rapids, MI 49503  
 Telephone: (616) 742-3936  
 Fax: (616) 742-3999  
 email: [pmears@btlaw.com](mailto:pmears@btlaw.com)  
 Cellphone: 616-450-6487

>>> "James J. White" <jjwhite@umich.edu> 9/16/2007 12:27 PM >>>  
 sure. when and what do you have in mind? is the committee involved in getting new stuff through the legislature - such as Article 1? At 11:17 AM 9/16/2007, you wrote:

Jim: I am the Chairperson of the UCC Committee of the BLS and am looking to schedule another regular meeting of the Committee this fall. I wondered if you would be willing to participate (briefly) by phone in that meeting either by (i) talking about an issue of your own selection; and/or (ii) addressing any new developments in the UCC. I am pretty flexible on scheduling. I would envision that you would call in to our conference call line, make your presentation, and then sign off. I think that we could keep your portion of the program as short as you would like it. Thank you very much for considering this request. I hope that all is well with you and your family.  
 Pat.

Patrick E. Mears  
 Co-Chair Finance, Insolvency &  
 Restructuring Department  
 Barnes & Thornburg LLP  
 300 Ottawa Avenue, NW  
 Suite 500

*Attachment A*

Grand Rapids, MI 49503  
Telephone: (616) 742-3936  
Fax: (616) 742-3999  
email: [pmears@btlaw.com](mailto:pmears@btlaw.com)  
Cellphone: 616-450-6487

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# UNIFORM STATE LAWS SCORECARD

## Survey of Adoptions of Revised Official Text of the UCC<sup>1</sup>

As of June 1, 2007

STATES	Article 1 (2001)	Article 2A <sup>2</sup> (1987) (1990)	Articles 3&4 <sup>3</sup> (2002)	Article 6 (1989)	Article 7 (2003)
Alabama	Enacted '04	Enacted '92	Not Enacted	Repeal '96	Enacted '04
Alaska	Not Enacted	Enacted '93	Not Enacted	Repeal '93	Not Enacted
Arizona	Enacted '06	Enacted '92	Not Enacted	Repeal '04	Enacted '06
Arkansas	Enacted '05	Enacted '93	Enacted '05	Repeal '91	Enacted '07
California	Enacted '06	Enacted '91	Not Enacted	Revise '90	Enacted '06
Colorado	Enacted '06	Enacted '91	Not Enacted	Repeal '91	Enacted '06
Connecticut	Enacted '05	Enacted '02	Not Enacted	Repeal '93	Enacted '04
Delaware	Enacted '04	Enacted '92	Not Enacted	Repeal '96	Enacted '04
District of Columbia	Not Enacted	Enacted '92	Not Enacted	Revise '97	Not Enacted
Florida	Not Enacted	Enacted '90	Not Enacted	Repeal '93	Not Enacted
Georgia	Not Enacted	Enacted '93	Not Enacted	Not Enacted	Not Enacted
Hawaii	Enacted '04	Enacted '91	Not Enacted	Repeal '98	Enacted '04
Idaho	Enacted '04	Enacted '93	Not Enacted	Repeal '93	Enacted '04
Illinois	Not Enacted	Enacted '91	Not Enacted	Repeal '91	Not Enacted
Indiana	Enacted '07	Enacted '91	Not Enacted	Repeal '07	Enacted '07
Iowa	Enacted '07	Enacted '94	Not Enacted	Repeal '94	Enacted '07
Kansas	Enacted '07	Enacted '91	Not Enacted	Repeal '92	Enacted '07
Kentucky	Enacted '06	Enacted '90	Enacted '06	Repeal '92	Not Enacted
Louisiana	Enacted '06	Not Enacted	Not Enacted	Repeal '91	Not Enacted
Maine	Not Enacted	Enacted '92	Not Enacted	Repeal '92	Not Enacted
Maryland	Not Enacted	Enacted '94	Not Enacted	Not Enacted	Enacted '04
Massachusetts	Not Enacted	Enacted '96	Not Enacted	Repeal '96	Not Enacted
Michigan	Not Enacted	Enacted '92	Not Enacted	Repeal '98	Not Enacted
Minnesota	Enacted '04	Enacted '91	Enacted '03	Repeal '91	Enacted '04
Mississippi	Not Enacted	Enacted '94	Not Enacted	Repeal '94	Enacted '06
Missouri	Not Enacted	Enacted '92	Not Enacted	Repeal '04	Not Enacted
Montana	Enacted '05	Enacted '91	Not Enacted	Repeal '91	Enacted '05
Nebraska	Enacted '05	Enacted '91	Not Enacted	Repeal '91	Enacted '05
Nevada	Enacted '05	Enacted '91	Enacted '05	Repeal '91	Enacted '05
New Hampshire	Enacted '06	Enacted '93	Not Enacted	Repeal '93	Enacted '06
New Jersey	Not Enacted	Enacted '94	Not Enacted	Repeal '94	Not Enacted
New Mexico	Enacted '05	Enacted '92	Not Enacted	Repeal '92	Enacted '05

STATES	Article 1 (2001)	Article 2A <sup>2</sup> (1987) (1990)	Articles 3&4 <sup>3</sup> (2002)	Article 6 (1989)	Article 7 (2003)
New York	Not Enacted	Enacted '94	Not Enacted	Repeal '01	Not Enacted
North Carolina	Enacted '06	Enacted '93	Not Enacted	Repeal '04	Enacted '06
North Dakota	Enacted '07	Enacted '91	Not Enacted	Repeal '93	Enacted '05
Ohio	Not Enacted	Enacted '92	Not Enacted	Repeal '96	Not Enacted
Oklahoma	Enacted '05	Enacted '91	Not Enacted	Repeal '97	Enacted '05
Oregon	Not Enacted	Enacted '89	Not Enacted	Repeal '91	Not Enacted
Pennsylvania	Not Enacted	Enacted '92	Not Enacted	Repeal '92	Not Enacted
Rhode Island	Enacted '07	Enacted '91	Not Enacted	Repeal '01	Enacted '06
South Carolina	Not Enacted	Enacted '01	Not Enacted	Repeal '01	Not Enacted
South Dakota	Not Enacted	Enacted '89	Not Enacted	Repeal '93	Not Enacted
Tennessee	Not Enacted	Enacted '93	Not Enacted	Repeal '98	Not Enacted
Texas	Enacted '03	Enacted '93	Enacted '05	Repeal '93	Enacted '05
Utah	Enacted '07	Enacted '93	Not Enacted	Repeal '96	Enacted '06
Vermont	Not Enacted	Enacted '94	Not Enacted	Repeal '94	Not Enacted
Virginia	Enacted '03	Enacted '91	Not Enacted	Revise '97	Enacted '04
Washington	Not Enacted	Enacted '93	Not Enacted	Repeal '93	Not Enacted
West Virginia	Enacted '06	Enacted '96	Not Enacted	Repeal '92	Enacted '06
Wisconsin	Not Enacted	Enacted '92	Not Enacted	Not Enacted	Not Enacted
Wyoming	Not Enacted	Enacted '91	Not Enacted	Repeal '91	Not Enacted

Please note that the Enactment Date does not necessarily reflect the effective date. Please refer to the applicable statute for the relevant effective date.

Our thanks to the National Conference of Commissioners on Uniform State Laws ("NCCUSL") for their help in compiling the information above. These revisions are based on information provided by NCCUSL available as of June 1, 2007.

1. In addition to enactments noted below, all states and the District of Columbia have adopted (i) the 1995 Official Text of Article 5 of the UCC, (ii) the 1994 Official Text of Article 8 of the UCC and (iii) the 1998 Official Text of Article 9 of the UCC.
2. All states have adopted the 1990 version of Article 2A with the exception of Louisiana and South Dakota. Louisiana has not enacted Article 2A and South Dakota still has the 1987 version of Article 2A. A 2003 version of Article 2A has been introduced in Kansas and Oklahoma, but has not yet been enacted in any state.
3. New York and South Carolina are the only states that still have the 1951 version of Articles 3 and 4.